

BURIED IN PAPERWORK: A 1099 UPDATE

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FIRST SESSION

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WEDNESDAY, FEBRUARY 9, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to call, at 1:00 p.m., in Room 2360, Rayburn House Office Building, Hon. Sam Graves (Chairman of the Committee) presiding.

Present: Representatives Graves, Bartlett, Chabot, King, Coffman, Mulvaney, Tipton, Fleischmann, Herrera Beutler, West, Ellmers, Walsh, Landry, Velázquez, Schrader, Critz, Altmire, Clarke, Chu, Cicilline, Richmond, Peters, Owens and Keating.

Chairman GRAVES. Good afternoon, and we will call this hearing to order.

Again, I want to welcome all of the new Members as well as returning Members to the 112th Congress and to the Small Business Committee. I look forward to working with everybody. I want to give a special thanks to Chairman Lungren and all of our small business witnesses that are going to be here today.

We are depending on small firms to reinvigorate our economy, so we must provide an environment in which I think that they can flourish and do just that.

We begin with session's hearings by examining the state of the health care reform and the effect on small businesses. Today, we focus on the health care law's provision that expands the business 1099 reporting requirements. Under the new provision, reports will also be required for goods and property as well as services. Additionally, reporting on payments to all corporations that are not tax-exempt will be required if they meet the \$600 threshold.

To reiterate, small business owners could be forced to fill out all this paperwork over and over again because of hundreds of ordinary business purchases that add up over the course of a year; business purchases such as equipment, furniture, office supplies, software and fuel.

Scheduled to take effect in 2012, the expanded 1099 reporting provision was added to the health care law to help close the so-called tax gap by generating revenue to pay for the law. However, a report by the IRS Taxpayer Advocate Service notes that the new reporting burden, particularly as it falls on small businesses, may turn out to be disproportionate as compared to any resulting improvement in tax compliance. In other words, the reporting requirements may not accomplish its intended purpose and could be an administrative nightmare for small businesses.

In addition, the Taxpayer Advocate Service has raised questions about the significant administrative challenges that the requirement may pose to the IRS. This new 1099 requirement will cause an avalanche of additional 1099 forms to be filed and affect over 36 million entities.

At a time when we should be making it easier to create jobs, promote growth and invest in our economy, small firms don't need yet another costly and burdensome mandate. Although attempts were made last session to repeal this provision, those efforts were unsuccessful. We must repeal it immediately so small businesses do not begin to devote scarce resources to compliance.

I am pleased that over 260 Members from both sides of the aisle have cosponsored Chairman Lungren's repeal legislation and that President Obama called for repeal in the State of the Union address. And last week, the Senate passed an amendment doing just that in its repealing of this provision.

Today we will hear from small business owners who would be affected by this new 1099 requirement and from the House author of the legislation to repeal it. And so I want to, again, thank all of you for being here and providing your testimony.

I now yield to Ranking Member Velázquez for her opening statement.

Ms. VELÁZQUEZ. I thank the gentleman for yielding.

Today's hearing will focus on an issue that could impact millions of small businesses across the country. While there is often little agreement in Congress on many policies, there is bipartisan consensus that the issue of 1099 reporting must be fixed.

As we examine the problems this requirement could pose, it is important to understand the concept's history. While some might like to believe it was created minutes before it was added to the health reform bill, it is a proposal that was years in the making.

Originally proposed by the Bush administration, the reporting provision was intended to ensure accurate income reporting. The Taxpayer Advocate suggested this type of change won't reduce the so-called tax gap and level the playing field and ensure all businesses pay their taxes.

Although there may have been a laudable goal behind the 1099 requirement, the new law will have severe unintended consequences for entrepreneurs with little benefit. Small firms already spend 1.8 billion hours on tax compliance, and the new 1099 rules will add to that burden.

It also does little to limit tax avoidance, as estimates have found it will improve tax compliance by only a half percent. Clearly, this minimal improvement is not worth the significant economic effects.

At a time when America needs to promote economic activity, the 1099 requirements could hamper transactions between businesses. If Congress does not act, businesses will see additional paperwork every time they buy equipment, sell goods, or make capital investments. Our Tax Code should reward growth, not serve as a roadblock to growth. That is why repeal is the only solution.

It is my hope that we can address this problem immediately. Many businesses are already spending money on compliance. If Congress acts quickly, small firms will see immediate benefits, freeing up capital for growth and job creation. As the economy con-

tinues improving, small businesses need to focus on what they do best: developing innovative new services, bringing additional products to market, and creating jobs.

This hearing can also serve as a starting point to examine other ways to limit burdensome regulations. Today's discussion offers witnesses an opportunity to expose not just the problem with 1099s but also highlight other regulatory reforms that may help entrepreneurs.

Throughout the 112th Congress, I will stand committed to working in a bipartisan way to remove or revise policies that stifle entrepreneurship, innovation and growth. That has been the spirit of this committee for the last many years, since Chairman Talent was the chairman, and then Steve Chabot was the chairman, and then when I came here. We do understand the important role that small businesses play. And compared to many other committees, we should be proud of the products that we reported out of this committee.

So, hopefully, fixing 1099 will be the first of the many issues that the committee can approach with enthusiastic support from both sides of the aisle. I would also hope that our focus today remains on the regulatory burdens facing small firms, and we do not get bogged down repeating political debates from last Congresses.

With that, let me welcome Chairman Lungren to the committee as well as the small businesses who have taken time from their busy schedules to testify before this committee.

Welcome.

Thank you, Mr. Chairman.

Chairman GRAVES. At this time, I would ask if there are any other opening statements, please submit them for the record. We will have a series of votes shortly, and I want to make sure that we get through Chairman Lungren's testimony.

Chairman GRAVES. It is my pleasure to introduce the first witness. He is chairman of the House Administration Committee, Congressman Dan Lungren from California. He has been the leader in the 1099 repeal. In fact, he introduced his bill in 2010 shortly after the health care law was passed, and he has reintroduced it and now has 260 cosponsors.

Welcome, Chairman Lungren.

STATEMENT OF THE HON. DANIEL E. LUNGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LUNGREN. Thank you, Mr. Chairman.

And thank you, Madam Ranking Member.

After those opening statements, I just have one thing to say: Amen and thank you.

First of all, let me thank you for the opportunity to testify regarding this legislative proposal, which has now been given the number H.R. 4. And I wish to acknowledge that the Small Business Committee is the appropriate place to begin the discussion of the bill.

If I were to summarize the bill, I would say that we are trying to get rid of something that shouldn't have been there in the first place. It is a totally ineffective way to solve the so-called tax gap problem. And only in Washington, I guess, could searchers for a needle in a haystack enlarge the haystack. This is exactly what the 1099 requirement does.

If you check U.S. tax compliance, it is among the highest in the world; if not the highest in the world, over 86 percent. And this provision would affect businesses most likely who are already in compliance. So it is misguided.

The idea for H.R. 4 had its genesis in the groundswell of concern among the small business community over the unintended consequences of a 170-word Section 9006 of the bill that contained over 240,000 words. Essentially this section would require all businesses and nonprofit organizations—oh, and by the way, and congressional offices. Every congressional office would be required to file 1099s for every vendor that you would transact business with over \$600 a year. Perhaps that is the good part of it. We would have to follow the same law that small businesses would.

This new mandate is set to take effect on January 1 of next year. Now, regardless of one's view on the health care bill, the new 1099 filing requirement could not be more ill-conceived. The focus of this committee relates to expanding opportunities for small businesses. And, unfortunately, this section of the health care bill takes us in precisely the opposite direction.

I know I have heard from many members of this committee that they are looking for ways to free small businesses from undue burdens. We should look for ways to free up the—as they call it—the animal spirits in order to encourage entrepreneurship. And rather than imposing these obligations for companies, we should seek ways to start—restart the engine of job growth.

The ranking member mentioned that this had its genesis with the Bush administration, and that is partially correct. The Bush administration Treasury Department talked about requiring cor-

porate services—that is corporations providing services—that in that regard 1099s ought to be filed. They never, as far as I am concerned, I don't know where this idea came from, that you would have to file 1099s for purchase of goods. That is an entirely new concept. And, frankly, I am not sure any hearings were ever held on that, any consideration on what that would do, and the tremendous range of application that that would have.

Look, we don't have the luxury of thinking that the small business community is this constant variable that can easily absorb additional requirements, additional burdens. Even in normal terms, it is challenging enough for new business ventures to succeed.

In my district, we have an unemployment rate of over 12.5 percent. Small businesses are having a tough time even hanging on. We hear from small businesses talking about the difficulty they have getting credit just to keep their businesses going. And then, on top of that, to face this kind of regulatory array of obligations is entirely unnecessary.

If we really seek to increase investment, hiring and business growth, we need to look for an environment that is more friendly to entrepreneurship.

When I first heard of this, actually it was a briefing that Congressman Burgess had to look at the business implications of the health care bill after it passed. The NFIB identified this as a problem. When my staff brought it to my attention, we started to examine it. And one of the things we discovered is not only would it be a burden on all businesses, but it would be a double-edged sword with respect to small business. Because if you want to minimize the number of 1099s you file, are you going to go to your local restaurant? Are you going to your local hardware store? Are you going to go to your local provider when you will have to keep track of every single purchase you make so that, if it reaches that \$600 threshold in a calendar year, you are going to have to file? Or if you want to minimize your 1099s, won't you go to the big box store? Won't you go to the big chains? In other words, this is a tremendous disincentive for the small business entrepreneur in all of our districts, and I am not sure anybody really thought about that.

One of the—someone who has been involved in small business before told me this, and he said it is obvious that whoever put this in the bill never has laid awake on a Thursday night trying to figure out how to make payroll for their employees on Friday. This is just an additional burden.

There are those who have said, the Tax Advocate for the Internal Revenue Service indicated that there is a questionable return on investment here, for the cost of the reporting placed on a small business could very well outweigh anything that the government gets.

Here is the last thing I would say is this, look, we talk about a tax gap, and that is a nice technical term. What we are suggesting is that people are cheaters. Now I think most people follow the law. And to suggest that virtually the entire business community, especially the small business community, is made up of a bunch of cheaters and we should then have a reporting requirement that doesn't go to the person who is filing the report, the 1099, as to any obligation they have, but rather as a report on somebody else

with whom they have at most an arm's length transaction, that somehow that is to get information on that other person, I just think is—I don't want to overstate it, but almost un-American. It is almost like we are asked to be a nation of snitchers.

When you look at it that way, you have to say: What is the original purpose of 1099? When you file a 1099, it is to, in many cases, ensure that you make sure that payroll taxes are paid. It is an obligation on your part. Then we extend a little bit further because we say, well, this is an easy way of getting some reporting that we can check on. Then we finally extend it to every purchase of every product possible over a 12-month period of time. It really boggles the mind to think that we think that this could be effective.

According to the National Taxpayer Advocacy Service analysis of 2009 IRS data, about 40 million businesses and other entities will be subject to this new requirement, including roughly 26 million nonfarm sole proprietorships, 4 million S corporations, 2 million C corporations, 3 million partnerships, 2 million farming businesses, 1 million charities, and other tax-exempt organizations, and more than 100,000 government entities, including each and every one of your offices. So I hope you are ready to have an accountant take care of this to make sure that you do not violate the law.

I just would say that we are now up to 270 cosponsors, which is kind of nice because when I introduced this a little less than a year ago, I had one sponsor, myself. And the response has been—it is bipartisan. I believe I have 34 Members from the minority that have signed onto this now. We have from the most conservative Members to my good friend Barney Frank have signed on. So if anybody wants to find a bipartisan piece of legislation, it is the only thing that I could find in the President's State of the Union address that he specifically mentioned that ought to be passed. So I hope that we can do that, and I hope we can do that with dispatch.

I thank you for your time and consideration.

[The statement of Mr. Lungren follows:]

Statement of Congressman Dan Lungren

Buried in Paperwork: A 1099 Update

**Committee on Small Business
U.S. House of Representatives**

February 9, 2011

First of all, I would like to thank the committee for this opportunity to testify regarding my legislative proposal—*The Small Business Paperwork Mandate Elimination Act of 2011 (H.R. 4)*. I wish to acknowledge that the Small Business Committee is the appropriate place to begin a discussion of my bill. The idea for H.R. 4 had its genesis in the groundswell of concern among the small business community over the unintended consequences of a 170 word provision buried within the 340,000 words of the health care law.

Essentially, Section 9006 of the “Patient Protection and Affordable Care Act” will require all businesses – and non-profit organizations – to file 1099 forms for every business-to-business transaction over \$600 per year. This new mandate is set to take effect on January 1, 2012.

Regardless of one’s view of the health care bill itself, the new 1099 filing requirement could not be more ill-conceived. The focus of this Committee relates to expanding opportunities for small businesses. Unfortunately, Section 9006 takes us in ~~precisely~~ the opposite direction.

We should be looking for ~~ways~~ to free small companies from unnecessary burdens. We should be ~~looking~~ for ways to free up “the animal spirits” in

order to encourage entrepreneurship. Rather than imposing new obstacles for companies, we should be seeking ways to restart the engine of job growth.

Imposing new paperwork burdens on our nation's job creators is misguided and certain to hamper the efforts of small companies to work their way out of our nation's lingering economic distress. In the current environment, it is not acceptable for us to dismissively pass off regulatory compliance costs without assessing their real-world effects on those who produce goods and services.

We do not have the luxury of thinking of the small business community as a constant variable which can easily absorb additional costs of doing business. Even in normal times, it is challenging enough for new business ventures to succeed.

In a report for the Small Business Administration (SBA), Office of Advocacy, Paul Headd points out that although small businesses are a dynamic source of job creation for our economy, they also operate in an environment best characterized by the notion of "creative destruction." In

this regard, SBA data indicates that half of all small businesses fail within the first five years.

The new 1099 filing requirement is emblematic of the broader array of regulatory obstacles which add to the difficulty faced by small business owners who are just trying to survive. This new government mandate only adds to the perceived burdens which lie ahead and raises what might best be described as an “uncertainty tax.” If we want to encourage investment, hiring and business growth, we should be looking at ways to create an environment which is more friendly to entrepreneurship. In this regard, the new filing requirement is entirely a step in the wrong direction.

I would also suggest that the specific impact of Section 9006 involves more than the additional paperwork requirements and compliance costs. Although this alone is sufficient justification for repeal of this onerous provision, there are also potential behavioral responses to it which are equally pernicious.

If a company does business with a number of suppliers, Section 9006 would require 1099 forms to be filed with respect to each of the suppliers where the sum total of the transactions exceed \$600 per year. One possible effect of

this is that there will be new incentives for companies to reduce the number of their suppliers by relying on larger entities to provide them with goods and services. Small businesses could prove to be a casualty of the law of unintended consequences.

Let me be clear that I accept the proposition that every person and every business entity has both a moral and legal obligation to fully report their taxable income. My legislation is not directed at this premise of our tax laws. What is at issue however is whether Section 9006 is a rational method of accomplishing compliance-related objectives. The fundamental problem with the new 1099 reporting requirements is that they are imposed on the broad universe of small business taxpayers that annually conduct more than \$600 of transactions with other vendors. The new filing requirements are both burdensome as well as over-inclusive.

According to National Taxpayer Advocate Service-analysis of 2009 IRS data, about 40 million businesses and other entities will be subject to the new requirement, including roughly 26 million non-farm sole proprietorships, 4 million S corporations, 2 million C corporations, 3 million

partnerships, 2 million farming businesses, 1 million charities and other tax exempt organizations and more than 100,000 government entities.

The overwhelming number of small business constituents that we represent, and who follow the law, will be forced to assume a new reporting burden which is patently unfair to them.

Finally, I would suggest to the committee that Section 9006 conveys the worst possible message to the small business community. It reflects a disconnect with the day to day reality faced by the men and women involved with companies in each and every one of our districts. As one small businessman recently related to me, "This is what you would expect from someone who has never laid awake at night worrying about making a payroll." He's right, and we shouldn't be adding to the worries of those who run small business enterprises.

With 269 cosponsors, I consider it a privilege to come before this committee to make our case. I was heartened by President Obama's comments during his State of the Union message calling for the repeal of this new burden on small business. We have an opportunity to work together and to

demonstrate to those who create jobs that we do in fact understand their struggles, and that it is our intention to remove rather than to impose new obstacles in their path.

Chairman GRAVES. Thank you, Mr. Chairman.

I just have one or two questions just out of curiosity. Can you tell me what on earth the IRS is going to do with all of this paperwork if this were to be implemented?

Mr. LUNGREN. Well, if they are going to do anything with it, they are going to have to hire more people and they are going to have some new software and new hardware to figure out what they are going to do with it.

Chairman GRAVES. And that is my next question. How many would they have to hire?

Mr. LUNGREN. Lord only knows. This is actually true. When I started to consider this bill last year after the health care bill passed, we called the IRS and asked them if they could tell us how it would apply and in what fashion. And their response to us was, we have to wait for guidance from Secretary Sebelius.

Chairman GRAVES. That is interesting.

Mr. LUNGREN. That is one of the problems you have when you mix up some bills.

Chairman GRAVES. I will turn to Ranking Member Velázquez for questions.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Thank you, Mr. Lungren, for your testimony.

My question to you is, you have a bill that has bipartisan support. You have a precedent that is on record. You have most of the members of this committee supporting the repeal of 1099. Do you support the recently passed legislation in the Senate, which has bipartisan support and was revenue neutral?

Mr. LUNGREN. Well, they added some language in that. It was an amendment, and it was an amendment to a bill, FAA bill, and it involves tax policy. So there is a question of whether or not a provision like that can actually initiate in the Senate or rather it has to initiate in the House under the section of the Constitution that requires us to initiate tax legislation. So all I can say is that I am glad for their support. I am happy they have taken a position, and my feeling is that if we can have a freestanding bill, H.R. 4, passed, I can't see how it wouldn't be passed in the Senate.

Ms. VELÁZQUEZ. H.R. 4 repeals the 1099 provision, but it does not address the issue of the \$22 billion in revenue that would be lost.

Mr. LUNGREN. Correct.

Ms. VELÁZQUEZ. What is your position on that?

Mr. LUNGREN. Well, my position on that is that this was largely an unknown section of the bill. I do not recall us debating this on the floor of the House. I don't even know whether they debated it on the floor of the Senate. We found out after the fact that they scored it for somewhere between \$19 billion and \$22 billion, and to suggest that because we are going to repeal a provision that has never gone into effect based on a scoring of tax revenue that they say they have never received before and that we, therefore, are obligated to substitute other taxes, frankly, I think that is a game that the American people ought not to play.

So I do not have a reflected amount of money, a respective amount of money for that. This simply gets rid of a provision of law that never existed before. It does not deny any taxes that had been

collected before. And under the Rules of the House adopted on the opening session, it is not required because it deals with the health care bill.

Ms. VELÁZQUEZ. Mr. Lungren, I understand and I hear what you are saying. But conceptually, whether or not you agree with the process, would you agree that it would be fiscally irresponsible for us not to pay for, not to find—

Mr. LUNGREN. No, not at all, because if I accept that proposition, I have to accept the argument that a provision that was not debated in the public, not understood by the public, never presented to us in the House, that never existed before, gets into law and we realize it is a huge mistake, that we are then obligated to introduce legislation that increases taxes by a like amount; I frankly just—let me just put it this way. I offered that question to my constituents and they overwhelmingly said no. Because you made a mistake last year, don't then double down on that mistake by saying, well, we are going to increase your taxes by a like amount for a program that never existed in the first place. So I don't think it is a budgetarily or fiscally irresponsible to pass—

Ms. VELÁZQUEZ. It is because it is going to expand on the deficit. It is going to broaden the deficit.

Mr. LUNGREN. Well, see, I understand what you are saying. But with all due respect, I will say this, I think that kind of an argument is the kind of argument that upsets our constituents at home because the collection of these revenues never existed before; there is an argument that it is somewhat fanciful in terms of the number they came up with; and third, you have the IRS tax advocate saying that the imposition of this may cause a greater burden dollar-wise on the affected small business than it would ever garner for the government.

Ms. VELÁZQUEZ. We don't agree, but JCT is a bipartisan body.

Thank you, Mr. Chairman.

Chairman GRAVES. Thank you.

Mr. Chairman, real quick, since when does money that the government is not receiving contribute to the deficit?

Mr. LUNGREN. It is the language in Washington, D.C., where we talk about expenditures. Have you ever heard the word "tax expenditure"? That is used to say that if we grant you a tax cut or don't increase your taxes, that amount of money you owe us. Philosophically, the only way I can understand that is if you absolutely believe that the first dollar that someone earns is the Federal Government's first and you only get to keep it at their acquiescence.

Chairman GRAVES. We are going to have to move fast because we do have votes any time now. So I will call on Mr. Tipton of Colorado. We will try to get through them. If we don't, then we will then break for votes.

Mr. TIPTON. Thank you, Mr. Chairman.

And thank you, Chairman Lungren, for being here at well.

I am a little curious, you may have covered this, but what is the cost, you listed off the millions of businesses that would have to comply with this if it stands as is, what would be the cost to those businesses?

Mr. LUNGREN. I haven't seen an actual number. I am sure maybe some of the other witnesses might be able to tell you that. I just

will say this, that the tax advocate said that the cost may in fact not be worth it in terms of that money that goes to the government. And I would agree with the tax advocate on that one.

Mr. TIPTON. But would it be a reasonable extension—I am a small business owner as well; you know, you scrap for every penny you have—that this, actually, if it stood, it would actually be more of a job inhibitor at a time when we are trying to create jobs?

Mr. LUNGREN. Well, you are going to take money to do this that you would use to hire somebody to do productive activity, I would think. And you have got to make sure that you are not wrong because you are subject to filing penalties if you don't file it correctly.

Mr. TIPTON. Thank you.

Mr. Chairman, I yield the balance of my time.

Chairman GRAVES. Mr. Critz of Pennsylvania.

Mr. CRITZ. Thank you, Mr. Chairman, Chairman Graves and Chairman Lungren, for appearing here.

I just have one quick question, something I learned during this debate. And by the way, I am one of those 34 cosponsors of the bill.

Mr. LUNGREN. Thank you very much. Talk to some of your colleagues, please.

Mr. CRITZ. Well, one of the things that I just learned that I did not know was that \$600 threshold was actually set in 1954. And the last time I checked, \$600 in 2011 does not buy the same amount as it did in 1954. And as we debate this reporting, shouldn't we also look at this reporting threshold as a possible way to also reduce small business reporting?

I mean, we all love accountants—who doesn't—and we would love to give them more work like this provision does, but I would be curious to have your feedback on that threshold limit.

Mr. LUNGREN. You are right. We do love our accountants. I am not sure I would allow my daughter to date one, but I think you are absolutely correct. We ought to do that. I thank the gentleman for bringing that to our attention.

Mr. CRITZ. Thank you, and I yield back.

Chairman GRAVES. Mr. Fleischmann from Tennessee.

Mr. FLEISCHMANN. Thank you, Mr. Chairman.

Chairman Lungren, thank you. I am also a cosponsor of this bill, and proud to do so.

I just returned from my district last week. I met with business people, small business people, chambers of commerce, and good hardworking people. Their question to me is basically with over 200 cosponsors of this bill, with the President's support of this bill, you have indicated that the Senate has a bill, perhaps, with some language in there that we can't necessarily live with but could possibly correct; what is the prospect of passage of this bill and how swiftly can we get some relief for the small business people in this country?

Mr. LUNGREN. All I can say is I have 270 cosponsors, and I introduced it with H.R. 4 with more than a majority in the House. I don't know when that has ever been done. The Speaker gave us H.R. 4. And as you know, the Speaker has the first 10 numbers that he designates for important legislation. The President gave us a shout out in his State of the Union address. The Senate has passed language that is exactly the same but with some additional

language. If I were a betting man, I would say the chances are pretty good and we ought to do it fairly quickly.

Mr. FLEISCHMANN. Thank you.

Mr. Chairman, I yield back.

Chairman GRAVES. Mr. Keating of Massachusetts.

Mr. KEATING. Thank you, Mr. Chairman.

I just had an interesting metaphor from the northeast that I think we could all take home with us in terms of the need to pass this quickly. It is more of a statement than a question.

I heard from people in Cape Cod, and I, too, am a cosponsor of the bill, but I heard from people from Cape Cod who just impressed upon me how many businesses this really—the scope of the businesses that this—you know, people from bed and breakfasts to U-Hauls to people in the tourism industry. But the one that, the letter I got that would be interesting to share was from a woman who told me that every time it snows, and we have had our share of snowfall in the northeast, every time it snows, remember that she has to fill out a new form because she is in the tree repair business, and every time there is a snowstorm, the trees need repairing. And every time it snows, remember when I am down here, she will be filling out another form. So given the climate this year, I hope the climate for change is as great. I think you will see great bipartisan support for your bill.

Thank you.

I yield my time.

Chairman GRAVES. Mr. Landry of Louisiana.

Mr. LANDRY. Thank you, Mr. Chairman.

That is what happens when you are a freshman, you see; I don't where the buttons are—or the bathrooms, I guess.

I certainly support this. As a former small business owner, I know exactly the kind of onerous burden this would place on small businesses and the impact it would have.

I guess my question is the IRS National Taxpayer Advocate report said there was concern that the new 1099 reporting, especially for small businesses, may be disproportionate compared with any of the other improvements in the tax compliance; do you agree with that?

Mr. LUNGREN. Oh, yes. They went on to say the requirement would require widespread administrative burden disproportionate to the value of the information to the IRS. They said that precisely because this extends itself to all goods purchases. It also went on to say the IRS will receive millions of such reports on paper, requiring it, meaning the IRS, to devote significant resources to entering the data into its systems manually, increasing the risk of transcription errors and rendering the data less reliable.

Mr. LANDRY. Thank you. I certainly appreciate your answer.

I yield back the balance of my time.

Chairman GRAVES. Mr. Owens of New York.

Mr. OWENS. I just want to state that I am a cosponsor. I also was a sponsor of a piece of legislation last year to accomplish this goal. And I certainly support what you are doing. I think we do have some dispute as to whether or not there is a necessary pay-for here. But I think we are moving in the right direction, and I hope

that this gets acted on promptly and we reach a bipartisan compromise on the pay-for issue. Thanks very much.

Chairman GRAVES. Mrs. Ellmers of North Carolina.

Mrs. ELLMERS. Thank you.

I would just like to say as a small business owner, a nurse for 20 years, I understand how cumbersome this is and how difficult it will be for our businesses to adhere to this. My question and the question that I have received from my constituents has been one thing. Now I know this is IRS legislation and language that has existed for quite awhile, but whose brilliant idea was it to put this in the health care bill in order to help pay for it?

Mr. LUNGREN. My understanding is that it came in on the Senate side, although I have not found a rush to claim fathership or mothership of this particular section.

Mrs. ELLMERS. That is my understanding, no one seems to be coming to the forefront. Thank you.

Chairman GRAVES. Chairman Lungren, I want to thank you for coming in. We have a vote going on right now. We will adjourn for approximately 20 or 25 minutes or so. We only have two votes, so it won't be too bad. So we will stand in recess until that time.

[Recess.]

Chairman GRAVES. The hearing will come back to order.

We have the second panel up, and you have 5 minutes. If you go for a little bit, I am not going to break your arm or anything, but please try to keep it to 5 minutes.

STATEMENTS OF SETH SHIPLEY, OWNER, SHIPLEY'S FINE JEWELRY, HAMPSTEAD, MD, ON BEHALF OF THE NATIONAL RETAIL FEDERATION; JOHN "MARK" EAGLETON, MANAGING MEMBER, EAGLETON VENTURES, LLC, THE EGG & I RESTAURANT, GOLDEN, CO, ON BEHALF OF THE NATIONAL RESTAURANT ASSOCIATION; R. JEROL KIVETT, PRESIDENT, KIVETT'S, INC., CLINTON, NC, ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS; AND MIKE KEGLEY, PRESIDENT, B.O.L.D. HOMES, INC., UNION, KY, ON BEHALF OF THE NATIONAL ASSOCIATION OF HOME BUILDERS.

Chairman GRAVES. And I will recognize Mr. Bartlett to introduce our first witness.

Mr. BARTLETT. Thank you very much. I am very pleased this is the second panel. I thought I was going to miss the opportunity to introduce the witness from my district. I was off the Hill giving a talk, but I got back just in time.

Of all of the counties I represent, I think probably in many respects the prettiest county is Carroll County. Everybody there takes an enormous amount of pride in their county. I have never seen such manicured farm fields as you see in Carroll County. And if you were to pick a town in Carroll County that kind of typifies Carroll County, I think it would be Hampstead.

My district is a small business district. It is made up of small businesses. I was in a former life a small business person, and so I am very pleased to have been able to be on this committee for 16 years now. I am happy to introduce one of my constituents, a

small business person who is struggling to stay in business in spite of stifling regulation and over-taxation.

Congratulations, sir, for being a survivor, and welcome to the committee.

Chairman GRAVES. You are recognized for 5 minutes.

STATEMENT OF SETH SHIPLEY

Mr. SHIPLEY. Mr. Chairman, Ranking Member Velázquez, and honorable members of the committee, I thank you for the opportunity to address your committee this afternoon about a pending threat to small businesses that I can best describe as formidable, frustrating and frightening.

My name is Seth Shipley, owner of Shipley's Diamonds and Fine Jewelry in Hampstead, Maryland. I appear before you on behalf of both the National Retail Federation and the Maryland Retailers Association.

From a small business perspective, the health care reform law enacted last year is at best a mixed bag and looks to me like it will hurt far more than it will help. Retailers recognize that repeal of the entire health care reform law is difficult given the current makeup of the Senate as well as President Obama's veto power. Therefore, we also support specific changes to The Patient Protection and Affordable Care Act, such as the repeal of the expanded Form 1099 reporting requirements.

Section 9006 of the PPACA will impact small business owners like me in ways we are sure of and in other ways we only imagine. There will be nothing positive or economically stimulating about it; really quite the opposite.

Requiring reporting for all noncredit card transactions over \$600 in a year will create a blizzard of reports that needlessly bog down commerce while also swamping the IRS. This provision has no relevance to our health care system and should promptly be repealed.

I strongly support H.R. 4, the Small Business Paperwork Mandate Elimination Act of 2011, introduced by Congressman Lungren. The National Retail Federation also strongly supports this bill. This necessary change to the PPACA rightly enjoys broad bipartisan support and received an overwhelming Senate vote of 81-17 February 2, 2011, on a dispositive procedural motion. We look forward to its prompt approval in the House as well.

My small store in rural Carroll County, Maryland, serves about 6,000 customers a year. According to the government Web site, it only takes 18 minutes for me to fill out a 1099 form. Even so, that means many, many more hours of work that will have to be devoted to filling out these forms. I conduct transactions with over 200 jewelry suppliers each year and will invest more than \$600 with each of them. That means additional hours of work to fill out those forms.

What I find extremely frustrating, however, is that there is nothing in the 18-minute government estimate that considers the time I will need to invest tracking each of my transactions throughout the year. In addition to all of the 1099 forms, I am told by my accountant that each 1099 form should have a completed W-9 form. This is a request for taxpayer identification and certification.

Ultimately, the bookkeeping requirements mandated by this new law will require hours and hours of additional work. My conservative estimate is that I will have to expend more than \$35,000 each year to comply with this new law. That is a significant blow to my net business income. At the moment, I do not know how I will be able to financially comply with this mandate.

I began my business in 1991 in my parents' basement. I have struggled and sacrificed to make my business what it is today. I have received no government loans or subsidies. I believe I have made a positive contribution to the economy in my town, my State, and ultimately my Nation. I have worked hard and been blessed with a small part of the American dream. If this law takes effect next year, I believe that dream will vanish for me and tens of thousands of small business owners across our great Nation.

I urge your immediate action to repeal this onerous legislation. I appreciate the chance to appear before you today on behalf of The National Retail Federation and the Maryland Retailers Association. Retailers look forward to working with you to repeal this burdensome reporting mandate and to help promote the enactment of a more positive health care reform. Thank you.

[The statement of Mr. Shipley follows:]



National Retail Federation Testimony

Hearing on

"Buried in Paperwork: A 1099 Update "

Committee on Small Business

United States House of Representatives

February 9, 2011

Seth Shipley
Owner
Shipley's Diamonds and Fine Jewelry
Hampstead, Maryland

Liberty Place
325 7th Street NW, Suite 1100
Washington, DC 20004
800.NRF.HOW2 (800.673.4692)
202.783.7971 fax 202.737.2849
www.nrf.com

Mr. Chairman, Ranking Member Velazquez and honored members of the Committee, I thank you for the opportunity to address your committee this afternoon about a pending threat to small business that I can best describe as formidable, frustrating, and frightening. My name is Seth Shipley, owner of Shipley's Diamonds and Fine Jewelry in Hampstead, Maryland. I appear before you on behalf of both the National Retail Federation¹ and the Maryland Retailers Association.

The health care reform law enacted last year is at best a mixed bag, and looks to me like it will hurt far more than help from a small business perspective. Retailers recognize that repeal of the entire health care reform law is difficult given the current makeup of the Senate as well as President Obama's veto power. Therefore, we also support specific changes to the Patient Protection and Affordable Care Act (PPACA) such as the repeal of the expanded Form 1099 reporting requirements.

Section 9006 of PPACA will impact small business owners like me in ways that we are already sure of and in other ways we can only imagine. There will be nothing positive or economically stimulating about it – really quite the opposite. Requiring reporting for all non-credit card transactions over \$600 in a year will create a blizzard of reports that will needlessly bog down commerce while also swamping the IRS. This provision has no relevance to our health care system and should be promptly repealed.

I strongly support H.R. 4, the Small Business Paperwork Mandate Elimination Act of 2011 introduced by Rep. Dan Lungren (R-CA). The National Retail Federation also strongly supports this bill. This necessary change to PPACA rightly enjoys broad bipartisan support – and received an overwhelming Senate vote of 81-17 February 2, 2011 on a dispositive procedural motion. We look forward to its prompt approval in the House as well.

Let me tell you a little about my business. My small store in rural Carroll County serves about 6,000 customers a year. I estimate that more than 1,500 of those customers spend more than \$600 a year in my store. According to the government website, it only takes 18 minutes for me to fill out a 1099 form. Even so, that means approximately 500 more hours of work will have to be devoted to filling out those forms for my customers by my estimate.

In addition, I conduct transactions with about 200 jewelry suppliers each year and will invest more than \$600 with each of them. That means an additional 60 hours of work to fill out those 1099 forms.

¹ As the world's largest retail trade association, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2010 sales of \$2.4 trillion. www.nrf.com

What I find extremely frustrating however, is that there is nothing in that 18 minute government estimate that considers the time I will need to invest tracking each customer's purchases throughout the year.

I will be required to track all 6,000 customers throughout the year to determine who spends more than \$600. I will also have to then contact each of those customers and invade their privacy to request their social security number so that I can complete the required 1099. I cannot begin to imagine the reactions of my customers when I ask them for this personal information and advise them I am required to report this to the government.

The 18-minute government estimate also does not include the time I will need to track each expenditure to the hundreds of suppliers I purchase from. Again, I will have to obtain that same personal information from each company I deal with.

In addition to all the 1099 forms, I am told by my accountant that each 1099 form requires completion of a W-9 form. This is a request for taxpayer identification number and certification.

Ultimately, the bookkeeping requirements mandated by this new law will require more than 1,000 hours of additional work. My conservative estimate is that I will have to expend more than \$35,000 each year to comply with this new law. That is a significant blow to my net business income. At the moment, I do not know how I will be able financially comply with this mandate.

I began my business in 1991 in my parent's basement. I have struggled and sacrificed to make my business what it is today. I received no government loans or subsidies. I believe I have made a positive contribution to the economy in my town, my state, and ultimately, my nation. I have worked hard and been blessed with a small part of the American dream. If this law takes effect next year, I believe that dream will vanish for me and tens of thousands of small business owners across our great nation.

I urge your immediate action to repeal this onerous legislation.

Conclusion

Again, I appreciate the chance to appear before you today on behalf of the National Retail Federation and the Maryland Retailers Association. Retailers look forward to working with you repeal this burdensome reporting mandate and to help promote the enactment of more positive health care reform.

Chairman GRAVES. Thank you, Mr. Shipley.

I now yield to Mr. Coffman to introduce his constituent witness.

Mr. COFFMAN. Thank you, Mr. Chairman.

It is a pleasure to welcome a fellow Coloradoan and constituent, Mark Eagleton, to the committee.

Mr. Eagleton is a managing member of the Egg & I Restaurant in Arvada, Colorado. In addition, he serves on the State Board of the Colorado Restaurant Association. Outside of his business, Mr. Eagleton serves as a volunteer Jefferson County reserve deputy sheriff. He and his wife, Sandy, have been foster parents to a total of 38 children.

Welcome to the committee, Mr. Eagleton. I look forward to hearing your testimony.

STATEMENT OF JOHN "MARK" EAGLETON

Mr. EAGLETON. Chairman Graves, ranking member Velázquez, Colorado Congressman Scott Tipton, and my Colorado Representative, Mike Coffman, and members of the House Small Business Committee. Thank you for the opportunity to testify before you today on behalf of the National Restaurant Association and the Colorado Restaurant Association on the impact of the expanded 1099 reporting requirements on small business.

My name is Dr. John "Mark" Eagleton. I am a franchisee and owner of the Egg & I® Restaurant in Arvada, Colorado. I began in the restaurant industry when I was 14 years old working as a busboy at the International House of Pancakes® to help pay my high school tuition. After that, I was with Arby's® restaurants for 21 years, eventually serving as the general manager and COO of Colorado's largest Arby's® franchisee, The Bailey Company, LLLP.

When I left there 6 years ago, my wife, Sandy, and I decided to take a chance. We leveraged everything we had to open our own restaurant. I cashed out my 401(k). I emptied my savings accounts. I sold my investments. I took out a second mortgage on my home. I just did everything I could to find every dime I could find. I even had my best friend chip in a small loan, and we opened our restaurant. And with the help of the Small Business Administration, I obtained a 7(a) loan and began business in April of 2004. I cannot emphasize enough that we invested every dime we had in our business, and I am proud of what we built.

We are a 133-seat restaurant open for breakfast and lunch from 6 a.m. to 2 p.m. every day. I have 26 employees, including my wife, two sons, and my adopted daughter. I love what I do, but every day I fight to succeed. I, and my team of 22, know that if the restaurant succeeds, we all succeed. And if the restaurant fails, my family and I face financial ruin and 22 families lose their source of income and their livelihoods. Any variable can tip the balance from being a going concern to just another failed business. The added 1099 reporting requirements may sound simple to comply with, but mandating that I track all vendors from whom I purchase at least \$600 in products and services each year and issue 1099s will be significant in both time and money.

I work with 200 to 300 vendors a year. Generally, I pay in cash or check. For instance, every single day I go across the street to the grocery store and buy a fresh head of lettuce to put in my salad

mix because if I buy it in bulk, it goes old before I can use it all. That lettuce costs \$1.79. And if I do that 363 days a year, for every day I am open, that exceeds the \$600 total. So, I now have to issue a 1099 for buying a head of lettuce every day. That is just ludicrous.

The expanded 1099 requirement will force me to monitor all purchases like this one. In addition, I will need to buy new software, track down each vendor's tax ID number, their address, key in that information, compile the data into 1099s, print and mail forms to the vendors and to the IRS. And still the process is unclear to me because I worry about the accuracy. What if my books don't agree with a vendor's records? How will we reconcile disagreements? Will I face fines if there is some sort of confusion?

So, to me, next comes a choice: I can either do the work myself or pay someone else to do it. I don't have the money to pay someone else to do it, so that means it falls on my shoulders. The past few years have been extremely challenging. For 2 years in a row, I have seen sales decline. The choice I make is, can I raise prices to cover the costs of doing all this? I don't think I can because I compete in a marketplace where my customers can easily go to my competitor.

I am also concerned about my guests. Almost every week a business networking group spends \$80 for a meal at my restaurant. Once a month, a department from a local business comes in for a business lunch and spends \$60 while they discuss workplace issues. They often pay in cash or by check. Will they continue to patronize my restaurant if they need to worry about 1099 requirements.

In addition to the 1099 provision, I urge Congress to address the fundamental changes within the entire health care law. My written testimony details the deep and growing concerns of my industry. Please consider who is affected if a restaurant like mine shuts its doors. One server who has been with me since I opened, Danielle, put herself through nursing school with our company's help. One of my cooks, Jeff, has a wife and two kids, and she is a school-teacher.

I employ college students who work with me on the weekends. Their age group faces the highest unemployment rate in decades. I worry what they will do if increased government regulations tip the scales and force me to close.

I hope this committee will convey our concerns and Congress will repeal the 1099 provision as soon as possible. The National Restaurant Association and the Colorado Restaurant Association look forward to working with you to revise health care laws generally.

Thank you again. I would be happy to take your questions at the appropriate time.

[The statement of Mr. Eagleton follows:]



Statement
On behalf of the
National Restaurant Association
&
Colorado Restaurant Association

ON: BURIED IN PAPERWORK: A 1099 UPDATE

TO: U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON SMALL BUSINESS

BY: JOHN "MARK" EAGLETON, FRANCHISEE
THE EGG & I, ARVADA, COLORADO

DATE: FEBRUARY 9, 2011

**Statement on
Buried in Paperwork: A 1099 Update
Before the
U.S. House of Representatives, Committee on Small Business
By
John "Mark" Eagleton, Franchisee, The Egg & I, Arvada, Colorado
On behalf of the
National Restaurant Association and the Colorado Restaurant Association
February 9, 2011**

Chairman Graves, Ranking Member Velázquez, Colorado Congressman Scott Tipton, my Colorado Representative Mike Coffman, and members of the House Committee on Small Business, thank you for this opportunity to testify before you today on behalf of the National Restaurant Association and the Colorado Restaurant Association.

My name is Mark Eagleton. I am a franchisee owner of the Egg & I restaurant in Arvada, Colorado, a northwest suburb of Denver. We are a 133-seat restaurant open every day from 6 a.m. to 2 p.m., serving breakfast and lunch.

I'm here today to ask Congress to repeal the expanded 1099 reporting provision passed in Section 9006 of the Patient Protection and Affordable Care Act (PL 111-148) and to explain the burden this requirement will have on small businesses like mine. In addition, there are fundamental problems with PPACA that must also be addressed by Congress.

The 1099 provision specifically requires me to report all business transactions, for both services and materials, with a vendor valued at more than \$600 aggregated annually. If this requirement is not repealed it will create a new hardship, particularly on small businesses, at a time that many of us are attempting to survive under the current weak economy.

I have been in the business since I began as a busboy at age 14. I was with Arby's® for 21 years, eventually serving as COO of The Bailey Company LLP, Colorado's largest Arby's franchisee. When I left Arby's, my wife, Sandy, and I decided to take a chance. We leveraged everything we had and we opened our own business in 2005. Our location is one of 42 Egg & I restaurants. The company is headquartered in Lone Tree, Colorado, and franchises restaurants in eight states.

THE RESTAURANT INDUSTRY IS PRIMARILY COMPOSED OF SMALL BUSINESSES

The National Restaurant Association is the leading business association for the restaurant and foodservice industry. The Colorado Restaurant Association is the leading business association for the restaurant and foodservice industry in Colorado.

The Associations' missions are to help our members build customer loyalty, rewarding careers and financial success. Nationally, the industry is comprised of 960,000 restaurant

and foodservice outlets employing 12.8 million people. We serve more than 130,000 million guests per day.¹ Despite being an industry of predominately small businesses, the restaurant industry is the nation's second-largest private-sector employer.

We are a unique industry. First, we are dominated by small businesses. More than seven in 10 eating and drinking establishments are single-unit operations. The restaurant industry also operates under relatively low profit margins – roughly 4 to 6 percent before taxes, according to the National Restaurant Association's Restaurant Industry Operations Report. Labor costs are one of the most significant line items for restaurants.

Many of these small businesses do not have a large administrative staff to handle recordkeeping and reporting responsibilities. In addition to the 1099 reporting requirements, these responsibilities include a myriad of requirements mandated by federal, state and local governments.

THE COST OF COMPLIANCE WITH THE NEW 1099 REQUIREMENTS COULD TAKE ME AND OTHER EMPLOYERS OUT OF BUSINESS

The expanded 1099 rules would force small businesses to collect taxpayer identification information from most, if not all, vendors, contractors and other business partners, as well as make their own tax identification number more easily accessible by customers.

The Treasury Department proposed a regulation in 2010 to exempt credit card transactions from the expanded 1099 mandate. That was a step in the right direction that is much appreciated by the restaurant industry. However, more needs to be done to reduce the expected paperwork burden from the new reporting requirements. My industry believes that Congress must act to repeal this section of the law.

I took every dime I had from anywhere I could get it to open our restaurant. I cashed out my 401(k). I emptied my savings. We took out a second mortgage on our home. My best friend became a limited partner. We received an SBA 7(a) loan. In short, I leveraged the family's entire future to open this restaurant. All we have is at risk and will be lost if this venture fails.

We are now in our sixth year, and I am very proud of what we have built. We have 26 employees, including my wife, two sons, and our adopted daughter. My son John Paul is a server/trainer. My son Dustin is our assistant kitchen manager. My special-needs daughter, Natasha, washes dishes.

I mentioned that profit margins in our business are slim. I fell way below the typical profit margin for a full-service restaurant last year. My sales in 2010 were \$944,504. That may sound good, but my cash flow for the year, after debt service, was a negative \$591.

As I ended 2010, the total amount of money in all my personal and business savings, checking and investment accounts – as well as lines of credit, and credit available on

¹ 2011 *Restaurant Industry Forecast*, National Restaurant Association (2011).

credit cards – added up to a little more than \$1,000. My family, employees, their families and I live and operate on the edge of success and failure. The following table displays my sales, cash flow and net income since I have opened:

The Egg & I® Sales, Cash Flow and Net Income Table:

Eagleton Ventures dba The Egg & I Restaurant in Arvada, Colorado			
Year	Annual Sales	Cash Flow (After Debt Service)	Net Income (After Depreciation and Amortization)
2010	\$944,504	(\$591)	(\$20,109)
2009	\$968,012	\$22,617	(\$9,472)
2008	\$987,509	\$30,766	(\$11,916)
2007	\$922,816	(\$4,634)	(\$74,404)
2006	\$978,872	(\$4,836)	(\$71,905)
2005	\$779,188	(\$8,009)	(\$38,387)

We've invested everything we have in this business. Any variable can tip the balance from my restaurant being a going concern to another failed business. If sales fall or costs rise and I cannot cover the increased expenses, my business will close very quickly. My family and I will lose our life savings and 22 other employees will lose their jobs and their livelihood.

The added 1099 reporting requirements sound simple to comply with, hardly more than the requirement to provide year-end W-2s. W-2s cost me over \$800 a year to input, track, print, mail and file with the IRS.

Providing 1099s for essentially all business to business transactions may be a simple edict, but it could put me out of business. The requirement that I track all vendors from whom I purchase at least \$600 in products or services annually and issue 1099s will be significant, in both time and money.

In this case, I have two choices: Do it myself, or pay someone else to do it. Where am I going to come up with the money? I don't have spare assets to put into play to make this happen. I can raise prices, but I compete in a marketplace where my customers can easily go to my competitor.

The practical consequences of the expanded 1099 requirements are staggering for a business like mine. I work with 200 to 300 vendors each year. Not all will reach the \$600 threshold, but since I don't know who will, I will need to record all the purchases I make. I must buy, install and learn new software; track down each vendor's taxpayer identification number and address; key in information for 200 to 300 vendors; compile data onto 1099s; and print and mail forms to vendors and the IRS if my purchases to any one vendor total more than \$600 for the calendar year.

If I can't get a taxpayer ID number for a vendor, I will need to withhold federal income taxes from my payments to them. I will do as much of this as I can myself, but will need to go outside for help – just like I need to do for my annual W-2 forms.

I worry about accuracy. I don't want to send my vendors erroneous information. I feel obligated to hire someone to double-check me. What if my books don't agree with a vendor's records? How will we reconcile disagreements? How much time will I spend answering questions from vendors? Will I face penalties from the IRS for failing to file proper 1099s?

To list just a few examples of the reporting this law will trigger:

- We like to use fresh produce in our salads. Everyday I cross the street to the local grocery store to buy a head of fresh Romaine lettuce to add to our salad mix. The lettuce costs me \$1.79 per day. I generally pay in cash, and do so for the 363 days a year we are open. My spending for fresh lettuce will exceed the \$600 threshold.
- Each spring, I spend at least \$600 a year on seasonal outdoor plants at my local nursery.
- I visit my neighborhood hardware store frequently when an electrical cord is frayed, when I need nuts and bolts to hang a picture on the wall, and for all sorts of other reasons. These nickel-and-dime purchases easily add up to \$600 a year.
- I stop by my local dollar store to buy light bulbs, picture frames, bandages, vacuum cleaner bags, and other items totaling more than \$600 a year.

These incidental, day-to-day costs of running a business are business payments I never had to worry about reporting to the IRS or companies before. How much time will I spend keying in data for 1099s?

Does that compliance burden justify the extra revenues the IRS expects to receive as a result of this law? What happens when I go out of business? The government loses all the revenue in that case.

Restaurateurs have another concern. Almost every week, a local business-networking group spends \$80 for a meal at my restaurant. Once a month, a department of employees from a local business comes in for a business lunch and spends \$60 while they discuss workplace issues. They often pay in cash or check.

Will these guests need to collect data from me so they can issue me a 1099 at year's end? Will they continue to patronize my restaurant if they need to track purchases and send me a 1099?

It is clear that there is bipartisan support for repeal of Section 9006. This shows that Congress is listening to the nation's job-creating small businesses. I hope this Committee can help convey our concerns to your colleagues and work to repeal this section of the law as soon as possible.

THERE ARE OTHER FUNDAMENTAL PROBLEMS WITH PPACA FROM THE PERSPECTIVE OF THE RESTAURANT INDUSTRY

Beyond the 1099 provision, there are some important fundamental problems with PPACA from the perspective of the restaurant industry. The early feedback from our industry on PPACA is not encouraging. So far, PPACA is failing to constrain rising health care and coverage costs, while imposing unsustainable costs and job burdens on the restaurant industry.

My business has provided health insurance to the same four people since 2005. In seven years, my annual premiums have risen 278 percent, from \$11,456 in 2005 to \$31,919 in 2011. Since the healthcare reform bill was enacted last March, my health insurance premiums have continued to rise. They haven't declined, as promised.

PPACA will have an enormous impact on the U.S. restaurant industry. Our employee demographics, our distinctively labor-intensive business models and a historically low voluntary enrollment rate in health insurance offerings will lead the U.S. restaurant industry to take the brunt of this act.

Restaurateurs will be predominantly affected by the burdens found in PPACA in a number of ways. First, the law defines a full-time employee as one working an average of 30 hours per week. This is vastly different than current practice in the restaurant industry – generally 40 hours per week.

This will create confusion and will mean employees' hours will be even more closely managed throughout the industry. Due to the higher costs, it is entirely rational to expect some employees' work hours will be cut even further in order to fall below the 30-hour-per-week threshold. We also expect to see less hiring of full-time employees overall. Because the restaurant industry is distinctively labor-dependent and constrained by thin profit margins, these changes to the business model might be the only way to remain profitable.

For front-of-the-house employees, the number of hours worked directly affects their income. Thus, the changes businesses will make because of PPACA would have another unintended negative consequence that has not fully been taken into consideration. We also fully expect less development and growth for existing restaurants, and we expect some restaurants operating with marginal profits to have to close their doors altogether.

The employer mandate and accompanying penalties that take effect in 2014 will impose a great burden on employers with 50 or more full-time employees or full-time equivalents who fail to offer qualifying coverage. The penalty is \$2,000 per full-time employee (defined as 30 hours or more per week) after the first 30 employees.

What's more, a restaurant could provide qualifying coverage to full-time employees and still be penalized for any subsidy-recipient full-time employees if the cost to one full-time employee exceeds 9.5 percent of that employee's household income and the employee

receives subsidized coverage. This penalty is \$3,000 per subsidy-eligible employee up to a maximum of \$2,000 times every full-time employee, after the first 30 employees.

The employment-based exemptions found in PPACA place direct pressure on employers to cut jobs in order to remain below the exemption level. The employment-based exemptions also do nothing to test whether the employer has the ability to absorb the additional costs. Thus, some in our industry are calling for an exemption based on a “profit-per-employee” (PPE) test. The PPE is calculated by dividing a business’s net profit by their number of employees.

A recent study from the University of Tennessee’s Center for Business and Economic Research concluded that PPE would be better than total employment for exempting employers because it is a better proxy for ability to pay.² Most restaurants already offer health care options to their employees. However, a PPE-based exemption would allow small and low-margin restaurants the flexibility to provide benefits at levels that allow them to remain profitable – helping preserve and create jobs, particularly important in this economic climate.

Finally, I worry about the fine print of this law – the rules that define a full-time employee as one who works 30 hours a week or 35 hours for discrimination testing, or a small business as one with fewer than 50 full-time equivalent employees. In our labor-intensive restaurants, 50 full-time equivalent employees isn’t a lot. Limiting the maximum contribution by employees to 9.5% of his/her salary or wage is too low.

In my opinion, a full-time employee’s weekly hourly threshold should be raised to 40 hours per week. It is my own opinion, as a small business owner, that the small business threshold should be greater than 250 employees. I understand that the National Restaurant Association is willing to support either a smaller number to reach consensus among the different policy makers or a different threshold, such as profit-per-employee. I also believe that employee contributions for health care should be raised to 50 percent of the health care premium.

For example, under the new law, if I have a server who is married and they have one child, health care premiums would be \$1,000 a month (using round numbers). Let’s say a typical server for me makes \$24,000 a year working 32 hours a week (including tips). Health care premiums would equal 50 percent of his/ her annual wages.

The employee contribution would be \$2,280 (9.5 percent of wages) and I, the employer, would have to pay \$9,720 for that one employee. I do not make that much profit in a year! If I had to pay that for even half my employees, it would total \$106,920 annually. How can I generate that much in new sales? I would have to generate an additional \$300,000 in sales annually just to generate the additional \$106,920. How? If I knew how to do that, I’d be doing that already!

² Bruce, Donald (Ph.D.), “An Economic Analysis of Business Exemptions from Public Policies,” Center for Business and Economic Research, The University of Tennessee, Knoxville, TN, August 2010.

LET US WORK TOGETHER TO FIND A SOLUTION THAT BOTH LOWERS HEALTH CARE COSTS AND PROVIDES BETTER BENEFITS WITHOUT BANKRUPTING SMALL BUSINESSES

Since enactment of PPACA, the National Restaurant Association has been attempting to constructively shape the regulations, including those covering mini-med policies. Nevertheless, there are limits to the scope of change we can achieve through regulations, particularly if those charged with their drafting choose to ignore the industry's comments. Ultimately, PPACA itself needs to be repealed or changed to mitigate the most harmful effects on the restaurant industry.

The National Restaurant Association will continue to be active in urging Congress to either repeal or pass major legislative changes to PPACA because some of the fundamental problems cannot be fixed through regulations alone. Our highest priority will continue to be eliminating the employer-mandate penalties.

In the meantime, other important changes are needed to ease the administration of benefits without constraining benefit offerings. These include the elimination of the auto-enrollment provision, the expansion of the limits on waiting periods, the modification in the definition of full-time employee, and other changes. The National Restaurant Association looks forward to working with this Committee and all of Congress on these and other important issues to improve health care for our employees without sacrificing their jobs in the process.

Thank you for this opportunity to explain the added burden the expanded 1099 information reporting provision included in PPACA will impose on small businesses like mine. The restaurant industry appreciates the steps this committee is taking to highlight the burdens small businesses will face if Congress does not repeal Section 9006 of the law. However, more must be done to address the other fundamental problems we see with this law. The industry looks forward to working with this Committee and Congress to eliminate the paperwork burdens of the expanded 1099 requirements and also on the fundamental problems with the law that impact so many of America's job creators.

Chairman GRAVES. Thank you, Mr. Eagleton.

I will next recognize representative Mrs. Ellmers to introduce her constituent witness.

Mrs. ELLMERS. Thank you, Mr. Chairman.

It is my distinct pleasure to introduce to you my friend Mr. R. Jerol Kivett. He is president of Kivett's, Inc., located in the district that I represent in Clinton, North Carolina.

The Kivetts started their family business years ago in 1958. Along with his father, they pooled their money together to start their business and continue it on. The Kivetts are the largest family-owned-and-operated pew manufacturer and refinisher in the United States for churches across the United States. Mr. Kivett has been at the helm since 1972. He is testifying today on behalf of The National Federation of Independent Businesses founded in 1943. The NFIB is the leading small business association representing small and independent businesses.

Welcome, Mr. Kivett. We are anxiously awaiting your testimony for 5 minutes. Thank you.

STATEMENT OF R. JEROL KIVETT

Mr. KIVETT. Thank you, congresswoman.

Good afternoon, Chairman Graves, Ranking Member Velázquez, and members of the committee. My name is Jerol Kivett, and I am the owner of Kivett's, Inc. I am pleased to be here as a small business owner and a member of the National Federation of Independent Businesses, the Nation's leading small business advocacy organization, to discuss the negative impact expanding the 1099 reporting provision will have on my business and small businesses in again.

I would also like to thank Congresswoman Ellmers for working with me to participate in this important hearing.

Kivett's, Inc., is located in Clinton, North Carolina, and is the largest family-owned-and-operated church furniture manufacturer and pew refinisher in the United States. In addition, our company manufactures and refurbishes other church furniture and fixtures, such as steeples and stained-glass windows. We also build and refurbish furniture for courtrooms. Kivett's provides a full range of services. We build new furniture, refurbish existing furniture, and provide both delivery and installation.

Our business was started by my father in 1958, and I took over in the early 1970s. At that time, we had fewer than 10 employees. But with hard work, we grew the business, and at our peak, we employed around 160 workers. When business was at its best, we were completing about one church per day. For the last few years, business has been down by 50 percent. The church furniture industry is small and competitive. With the recession, many of our customers saw donations drop, meaning they had less to spend on renovations and expansions. As a result, our current work force has dropped to about 55 employees.

In the face of the economic challenges facing small businesses like ours, we are confronting daunting new policy challenges as well. Working through a recession is tough, but adding to the burden with confusing new laws and regulations makes the recovery

twice as hard. The uncertainty being created by Washington is stifling a small business recovery.

The new health care law and uncertainty it is creating for small business owners makes it harder for us to determine what our cost will be. The expanded 1099 reporting requirement included in the health care law is a good example of the kind of misguided policy that works against the interest of small businesses.

Filing our annual tax return is never a task we look forward to, but making filing more burdensome only drains resources from small businesses like ours. In fact, in a recent NFIB Small Business Problems and Priorities Survey, tax complexity was ranked as the fifth biggest problem for small business owners.

Small business owners spend on average \$74 per hour for paperwork associated with tax compliance, the highest paperwork compliance imposed on small businesses by the Federal Government. The expanded 1099 reporting requirement in the health care law adds to this already heavy burden and increases our operating costs. Previously, businesses were required to file a form 1099 for services received from an unincorporated business of over \$600. The health care law expands the requirement in two ways: First, businesses must file for services received of over \$600 from both incorporated and unincorporated businesses; and second, for property or material purchased in excess of \$600.

Over the last 3 years, we filed approximately 25 form 1099s annually. And at our business peak, we filed 50 per year. With the new health care law, we will average about 300 filings based on today's business activity. If we reach our peak again, we will file about 600 forms annually. I will have to dedicate additional time and money to ensure that I comply with this new requirement. This diverts resources away from the core functions of my business.

The burden can't simply be measured in the number of forms but also in the information that we will have to track to complete the forms. We will have to follow the amounts of our purchases from each vendor to determine when or if we meet the \$600 filing threshold. In addition, we will have to request the taxpayer identification numbers of our vendors, as well as correct addresses to send the final forms.

The expanded reporting requirement also applies to my customers, meaning that we will receive requests for information and more 1099s for the work and property we supply. Our customers, mostly churches, compose a unique problem for us: Churches are not sophisticated taxpayers. This places the burden upon my company to ensure that their forms are completed properly. This means more resources being dedicated to filling out forms and less dedicated to serving our clients and growing our business.

This new reporting burden falls especially hard on small businesses. Unlike large firms, most of the small businesses lack an in-house accounting department to handle tax filings. For the smallest businesses, increased paperwork is often handled by the owner.

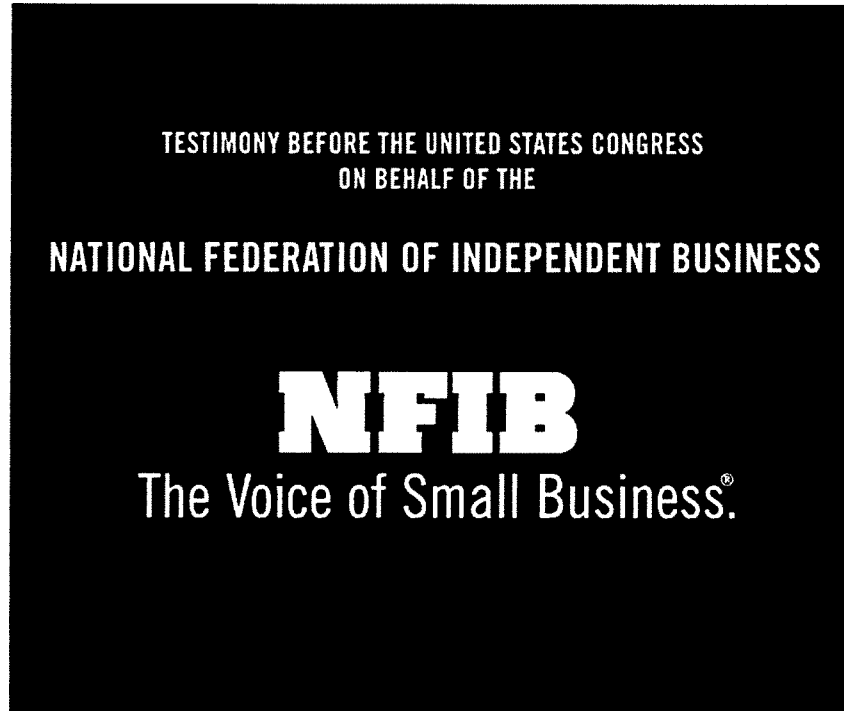
The new 1099 requirement would also place small businesses at a competitive disadvantage. Some businesses may look to move to larger vendors to consolidate their purchases and reduce the number of forms they file, or they can handle the reporting burden for

them, meaning fewer customers and opportunities for small businesses.

The expanded 1099 reporting requirement places an unnecessary and onerous burden on small business owners. It is time for Congress to repeal the provision before it goes into effect next year.

Thank you for the opportunity to appear before the committee. I look forward to any questions at the proper time.

[The statement of Mr. Kivett follows:]



Testimony of Jerol Kivett, Kivett's, Incorporated

The Committee on Small Business

Buried in Paperwork: A 1099 Update

February 9, 2011

Good morning, Chairman Graves, Ranking Member Velázquez, and members of the Committee.

My name is Jerol Kivett, the president of Kivett's Incorporated, and I am pleased to be here as a small-business owner and member of the National Federation of Independent Business (NFIB) – the nation's leading small-business advocacy organization - to discuss the negative impact the expanded 1099 reporting provision will have on my business and small businesses in general.¹

I would also like to thank Congresswoman Renee Ellmers for working with me to participate in this important hearing.

Kivett's Inc., located in Clinton, N.C., is the largest family-owned and operated church pew manufacturer and pew refinisher in the United States. In addition, our company builds and refurbishes other church furniture and fixtures, such as steeples and stained glass windows. We also build and refurbish furniture for courtrooms. Kivett's provides a full range of services – we build new furniture, refurbish existing furniture, and provide both delivery and installation.

Our business was started by my father in 1958 and I took over the business in the early 1970s. At the time we had fewer than 10 employees, but with hard work we grew the business and, at our peak, employed around 160 workers. When business was at its best, we were completing about one church per day.

The last few years, business has been down by about 50 percent. The church furnishing industry is small and very competitive. With the recession, many of our customers saw donations drop, meaning they had less money to spend on renovations and expansions. As a result our current workforce has dropped to about 55 employees and we have made cuts elsewhere.

In the face of the economic challenges facing small businesses like ours, we are confronting daunting new policy challenges as well. Working through a recession is tough, but adding to the burden with cumbersome and confusing new laws and regulations makes a recovery twice as hard. The uncertainty being created by Washington is stifling a small business recovery.

The new healthcare law and the uncertainty it is creating for small-business owners makes it harder for us to determine the cost of running our business. The expanded 1099 reporting requirement included in the healthcare law is a good example of the kind of misguided policy that works against the interest of small businesses.

Tax filing is never a task small-business owners look forward to, but making filing more burdensome only drains resources from already struggling companies. In fact, in a recent *NFIB Small Business Problems and Priorities* survey tax complexity was ranked as the fifth biggest problem for small-business owners.²

¹ Section 9006 of the Patient Protection and Affordable Care Act; P.L. 111-148.

² William J. Dennis, *Small Business Problems and Priorities*, NFIB Research Foundation, Washington, DC series.

This is not a surprise when you consider the time and money a small-business owner has to spend to comply with the tax code. Small businesses spend annually between 1.7 billion and 1.8 billion hours on tax compliance and \$18 billion to \$19 billion on compliance costs.³ Small-business owners also spend, on average, \$74.24 per hour on the paperwork associated with tax compliance – the highest paperwork cost imposed on small business by the federal government.⁴

The expanded 1099 reporting requirement in the healthcare law adds to this already heavy burden and increases the cost of running my business. Prior to passage of the healthcare law, businesses were required to file a Form 1099 for services received from an unincorporated business (sole proprietor, LLC or partnership) of over \$600. The healthcare law expands the requirement in two ways. First, the business must file a Form 1099 for services received from an incorporated business of over \$600 and second, the business must file a Form 1099 for property purchased in excess of \$600.

Over the last three years we filed an average of about 25 Form 1099s annually and, when our business was at its peak, we filed an average of about 50 per year. With the new expanded reporting requirements my filings will increase considerably. We will average about 300 filings based on our business activity over the last three years. If we reach our peak again, we will have to file about 600 forms. I will have to dedicate additional time and money to ensure that I comply with this new requirement, diverting resources away from the core functions of my business.

The burden cannot simply be measured in the number of forms, but also in the information that we will have to compile to complete the forms. We will have to track all of our purchases with each vendor to determine when or if we meet the \$600 threshold. In addition, we will have to take the time to request the taxpayer identification numbers of all our vendors, as well as the correct address to send the final forms. The expanded requirements create a flood of new paperwork and record-keeping for us to manage.

The new reporting requirements also apply to my customers, meaning that we will receive requests for information and more 1099s for the work and property we supply. We will have to send W-9 forms with our taxpayer identification numbers to our customers, meaning more forms for us to fill out.

Our customers – mostly churches – could pose a unique problem for a business like ours. Churches are not sophisticated taxpayers, so it is likely that we will spend more time working with them to ensure they properly fill out the new forms. This means more resources being dedicated to filling out forms, and less dedicated to serving our clients and growing our business.

Our business will also be forced to correct filing errors and, with increases in the number of forms, mistakes are more likely to occur. Mistakes such as incorrect taxpayer identification numbers or the wrong name of the business will require us to answer more questions from our customers and could eventually lead to inquiries from the IRS. On top of that, a failure to file a

³ Donald DeLuca, Scott Silmar, John Guyton, Wu-Lang Lee, and John O'Hare, "Aggregate Estimates of Small Business Taxpayer Compliance Burden," Proceedings of the 2007 IRS Research Conference.

⁴ *Paperwork and Record Keeping – NFIB Small Business Poll*, NFIB Research Foundation; Washington, DC; Volume 3, Issue 5; 2003.

proper Form 1099 also requires businesses to withhold on the contract, which will drain even more capital from businesses.

The problems created by the new 1099 burden are not unique to our business. In fact, other members of the NFIB have raised similar concerns about the increased burden and number of forms they will have to file.

A restaurant supply company in Raleigh, North Carolina noted they buy from over 600 vendors and would face an explosion of paperwork. The owner stated that efforts to comply with all of the new paperwork would take away from their business.

A bookbinding business in Denver, Colorado would see an increase in 1099 filings from less than a dozen last year to more than 1000. The business does not have an in-house accountant and would have to consider hiring a part-time employee just to complete the forms. The owner said, "If I have to hire a part-timer, I don't want them filling out government forms, I want them to be binding books."

The owner of a family-run collision repair shop in Louisiana told a similar story with an increase in 1099 filings from four to several hundred. The owner expressed the sentiments of many small-business owners, "This just doesn't make sense."

In the end, this new reporting burden falls especially hard on already struggling small businesses. Unlike larger firms, most small businesses lack an in-house accounting department to handle tax filings. For the smallest businesses, increased paperwork is often handled by the owner. The new 1099 requirement will also place small businesses at a competitive disadvantage. A larger business might be able to offer services to handle the 1099 filings for their customers. I do not have the resources to offer such a service. This could mean that many businesses may look to move to larger vendors that can handle this new burden for them, taking customers and opportunities away from small businesses.

We started our business to do something we enjoy – making and refurbishing church furniture. Through hard work and dedication, we expanded our business and created dozens of jobs. The new 1099 requirements will force us to spend more time completing forms, tracking information and dealing with the IRS, and less time focusing on the core functions of our business, serving our customers and growing so we have a reason to hire again.

The expanded 1099 reporting requirement places an unnecessary and onerous burden on small-business owners. It is time for Congress to repeal this provision before it goes into full effect next year.

Thank you for the opportunity to appear before the committee and I look forward to any questions you may have.

Chairman GRAVES. Thank you, Mr. Kivett.

At this time, I recognize Ranking Member Velázquez for her witness.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

It is my privilege to introduce Mr. Mike Kegley. He is the president of the B.O.L.D. Homes located in Union, Kentucky. B.O.L.D. provides residential construction, commercial construction, remodeling, land development and real estate services. Mr. Kegley is testifying on behalf of the National Association of Home Builders. The association was founded in 1942 and has more than 160,000 members. Welcome.

STATEMENT OF MIKE KEGLEY

Mr. KEGLEY. Thank you, Chairman Graves, Ranking Member Velázquez, on behalf of the 160,000 members of the National Association of Home Builders, I thank you for the opportunity to testify today before the House Small Business Committee.

My name is Mike Kegley, and I am a builder in Union, Kentucky, and the 2011 president of the Home Builders Association of Kentucky.

In 1986, my two brothers-in-law, my wife Janet and I started our home building business in northern Kentucky; 6 years ago, our son joined the family business.

Few industries have struggled more during this recession than the home building industry, and it has been no different for us. Our production has dropped from 16 homes built with 17 employees in 2007 to 6 homes last year built with 7 employees. We started performing remodeling work to make ends meet, and my wife had to leave the company and return to her field of speech therapy.

In this economic environment, any additional administrative costs imposed upon me will greatly affect the future of my company and the jobs of my employees.

Mr. KEGLEY. So I am pleased the committee is focusing today on the impact of the new 1099 information reporting requirements on small businesses.

The new requirement will substantially increase the reporting requirements on small homebuilders. In January, the NEHB conducted a survey of builders to determine how many additional form 1099s would be issued under the new law. The medium result was 40 additional 1099s, but 38 percent of the responders indicated they would issue 50 or more additional 1099s, and 17 percent would issue 100 or more additional forms.

For my company, if the new law had been in effect, I would have issued approximately 144 additional 1099s in 2008, 122 additional forms in 2009, and 173 additional 1099s last year. A major reason for the increase in 1099s is not just the removal of the corporate exemption but imposing reporting requirements on a host of new transactions, such as goods, utility payments, and freight.

In the homebuilding industry, our employees can be spread across multiple building sites. For example, the simple task of tracking fuel purchases from multiple gas stations in possibly multiple States is daunting. It is not just as simple as collecting receipts; we would need to determine the taxpayer identification

numbers for each gas station as they are likely owned by different franchise owners.

We further estimated that it would cost my company an additional \$6,400 in administrative costs for the first year the new law takes effect to obtain and catalog the additional W-9 forms. Succeeding years would run about \$1,900 annually to keep up with the new W-9s and make sure they are correct.

In addition, we estimate the added cost of creating the additional 1099s had the law been in effect would have been nearly \$2,200 in 2008, over \$1,800 in 2009, and \$2,600 last year. These numbers do not include the software upgrades I would have to purchase.

I have also checked with three different accounting services in Kentucky. Their average cost for preparing a form 1099 was \$50 for the first form and \$25 for each additional form, with some volume discounts for over 100. Of course, even that does not include the cost of obtaining and updating the W-9 forms or other administrative costs.

To conclude, I am convinced that the additional compliance outweighs any of the estimated tax revenue. I also believe that these reporting requirements will make small businesses less competitive relative to larger corporate businesses.

There is a solution, and I urge Congress to move swiftly to repeal these new information reporting requirements. Thank you for allowing me to testify, and I look forward to your questions.

[The statement of Mr. Kegley follows:]

Testimony of

Mike Kegley

**On Behalf of the
National Association of Home Builders**

**Before the
United States House of Representatives
House Committee on Small Business**

Hearing on

Buried in Paperwork: A 1099 Update

February 9, 2011

Introduction

On behalf of the more than 160,000 members of the National Association of Home Builders, I appreciate the opportunity to submit this testimony to the House Committee on Small Business. My name is Mike Kegley, and I am a builder from Union, Kentucky, and the 2011 President of the Home Builders Association of Kentucky. I also serve as an alternate director on the National Association of Home Builders' Board.

I am a small business owner and Manager of The B.O.L.D Company. In 1986, my two brothers-in-law, my wife Janet, and I started our home building business in northern Kentucky. The company continues to be a family business, and six years ago my son joined the business. We have seven employees and built six homes in 2010.

Few industries have struggled more during this recession than the home building industry, and it has been no different with my company. Our business has seen a reduction from 16 homes built with 17 employees in 2007 to 6 homes in 2010 with 7 employees. We moved into remodeling work to make ends meet, and my wife had to leave the company to return to her field of speech therapy. We have struggled to keep our business, retain our employees, and maintain a minimum standard of living for the four families depending on the success of our company.

In this economic environment, any additional administrative costs imposed on me will greatly affect the future of my company—and the jobs of my employees. I am pleased that the Committee is focusing today on the impact of the new 1099 information reporting requirements on small businesses.

Information Reporting Requirements Prior to 2011

The Internal Revenue Service (IRS) requires businesses to issue a Form 1099 to any individual or unincorporated business paid in excess of \$600 per year for services rendered. This is required whether the payments are spread out over the course of the year or paid in one payment. Under current law, businesses are generally not required to issue a Form 1099 to incorporated businesses.

Changes to the Information Reporting Requirements

The *Patient Protection and Affordable Care Act* (P.L. 111-148) and the *Small Business Jobs Act of 2010* (P.L. 111-240) both expanded the tax code's information reporting requirements. Effective January 1, 2011, the *Small Business Jobs Act of 2010* expanded the requirements to so-called independent landlords. The *Patient Protection and Affordable Care Act* imposes additional reporting requirements beginning on January 1, 2012; the major changes are removing the exemption for payments to corporations and reporting on purchases of goods.

Independent Landlords

Prior to 2011, landlords who were not engaged in the trade or business of renting real property were exempted from the information reporting requirements. Typically, these landlords are referred to as "independent" landlords as they represent individual investors in rental properties. For example, a

homeowner who rents out a basement apartment or an investor in a vacation rental property were generally exempt from the information reporting requirements as they are not considered by the IRS to be engaged in the business of renting real property.

The *Small Business Jobs Act of 2010* removed the exemption for independent landlords, requiring them to comply with the information reporting requirements for payments made beginning in 2011. Individuals or firms that engage in real estate management services, owning and renting real property, were already required to comply with the information reporting requirements.

NAHB is concerned that many independent landlords remain unaware of this change in law and lack the technological ability to comply with it. Of note, the Act was signed into law on September 27, 2010, leaving landlords with little more than three months to implement accounting measures to comply with the reporting requirement. NAHB believes that this short time period is simply inadequate and unfair.

In most cases, the impacted landlords are not sophisticated investors. For example, a family who needs to relocate may choose to rent out their home rather than sell it. In other cases, individuals may rent out an apartment in their home to help make ends meet. They are now required to comply with complex information reporting requirements, including learning how to process and submit Form 1099, and to do so with only three months of advance warning. This will come at a significant cost and adds an unnecessary level of complexity to an already complex tax code.

The new law does contain several exemptions. The first exemption is for those who receive rental income from renting their principal residence on a temporary basis. This targets scenarios where a family may choose to rent out their home for a short period of time while they travel or during a special event in their home town. The second exemption excludes landlords receiving rental income of a minimal amount, as determined by regulation. Finally, the Secretary of Treasury may exempt individuals if compliance would cause a hardship. This potential impact of this final exemption is unclear as regulations have not yet been proposed.

On top of the administrative burdens faced by independent landlords, the *Small Business Jobs Act of 2010* also increased penalties for failure to file an information return or failing to provide a copy of the information return to the payee. While NAHB lacks data suggesting the impact of this provision, it is reasonable to assume that most landlords, if they are even aware of this new requirement, will struggle to comply, and will now also face significantly higher penalties.

By imposing this change in law with less than three months notice, we believe it is reasonable to say that landlords have been set up for failure when it comes to compliance. NAHB urges Congress to reexamine the wisdom of imposing these burdensome requirements on independent landlords and, ultimately, to repeal them. Simply put, we do not believe that the cost imposed on independent landlords is commensurate with the additional tax revenue raised.

Repeal of the exemption for payments to corporations and expansion to goods

Beginning in 2012, the *Patient Protection and Affordable Care Act* requires all business to track and report additional payments that were previously excluded from the reporting requirements. Payments to corporations will no longer be exempt. The new requirement also expands the type of payments that will trigger reporting requirements beyond services to payment for goods or other property. Effectively, nearly every business-to-business transaction will be reported on Form 1099.

NAHB believes the new reporting requirements will impose significant paperwork burdens and costs on small businesses. Home builders are already familiar with reporting requirements as existing law has particularly focused on services. Nonetheless, the new requirement will substantially increase the reporting requirements on small home builders. In the January 2011 Builders' Economic Council Survey, NAHB surveyed builders to determine how many additional Form 1099s would be issued under the new law:

Number of Additional 1099s	Percent of Respondents
Fewer than 10	17%
10 to 24	17%
25 to 49	20%
50 to 74	14%
75 to 99	7%
100 or more	17%
Not sure/Don't know	7%
Median Number of Additional 1099s	40

The median result was 40 additional Form 1099s, but 38 percent of the respondents indicated they would issue 50 or more additional Form 1099s, and 17 percent would issue 100 or more additional forms.

A major reason for the increase in Form 1099s is not just the removal of the corporate exemption, but imposing reporting requirements on a host of new transactions, such as goods, utility payments, and freight. As an industry where businesses may be working on multiple building sites or managing multifamily rental properties, there will be significant costs involved to track, aggregate, and report all required transactions. In the home building industry, employees can be spread across multiple building sites. For example, the simple task of tracking fuel purchases from multiple gas stations, possibly in multiple states, is daunting. It is not as simple as collecting receipts. Businesses must determine the tax payer identification numbers for each gas station, as they are likely owned by different franchise owners. Many businesses will be forced to hire additional staff to comply, and few home builders are in the position to do that.

For the B.O.L.D. Company, we issued in 2008 27 Form 1099s; in 2009 32 Form 1099s; and in 2010 29 Form 1099s. I employ a part-time bookkeeper, and according to her calculations, if the new law were in effect, I would have issued approximately 144 additional Form 1099s in 2008; 122 additional Form 1099s in 2009; and 173 additional Form 1099s in 2010. My bookkeeper further estimated that it would cost my company an additional \$6,400 in administrative costs for the first year the new law takes effect to obtain and catalog the required W-9 forms to track the necessary taxpayer identification numbers. Subsequent years would run about \$1,900 in W-9 upkeep costs. In addition, she estimated that the added administrative costs of generating the additional 1099s, had the law been in effect, would have been nearly \$2,200 in 2008, over \$1800 in 2009, and almost \$2,600 in 2010. To provide a rough estimate of total cost, had the law entered into effect in 2010, it would have cost my company \$6,400 to obtain and catalog the W-9 forms and \$2,600 to generate the additional Form 1099s, for an estimated total of \$9,000. And that does not include the software upgrades I would have to purchase or subsequent work to correct any errors. Currently, the IRS requires companies that file more than 250 Form 1099s to do so electronically. I do not anticipate that I would meet that threshold, but as a matter of efficiency, filing electronically may be the preferred option for many businesses. However, I note that most "off the shelf" accounting programs small businesses use are not able to file these forms electronically. The software my company uses does not have that ability.

Many home builders depend on outside bookkeepers and accountants. I checked with three different services in Kentucky and came up with the following as an average cost of preparing a Form 1099: \$50 for the first form, and \$25 for each subsequent form. Additional volume discounts are available for more than 100 forms. Of course, this does not include the cost of obtaining and keeping current the W-9 forms and other administrative costs associated with compliance.

Home builders will face an additional level of complexity and higher compliance costs due to how most small builders must structure their businesses. As a result of insurance, licensing requirements, and liability issues, many small builders have multiple, very small companies performing several functions. For example, it is typical for a builder to operate their home building and remodeling company as separate entities. They may have different investors and will have separate bookkeeping. Each of these small entities would need to generate their individual 1099s increasing the complexity of managing a small home building business.

The burden on business stretches far beyond the scope of issuing additional 1099s. For the payees receiving the forms, they will face a substantial increase in forms that they will need to subsequently reconcile against their own records. And when errors occur—and there will certainly be errors—businesses will need to designate substantial time correcting the forms. As purchases of goods will begin to trigger the reporting requirements, matters become more complicated when product returns are factored in. Many goods face a high rate of returns, and tracking returns correctly will be essential to providing accurate Form 1099s. This will add another level of expense and complexity for small businesses—both for the buyer and the seller.

NAHB also believes that these reporting requirements will make small businesses less competitive relative to larger, corporate businesses. Small businesses will take steps to reduce their paperwork burdens by purchasing from fewer sources. Rather than purchasing nails from the local hardware store, lumber from the specialized dealer, and drywall from another supplier, builders may simply take all of their business to a larger retailer to reduce the resulting paperwork from each purchase. Small product suppliers will pay a price.

Exemption of Payments Made By Credit Card

The IRS has indicated that payments made by credit card will generally be exempt from the new information reporting requirements. This does provide a modest degree of relief, but NAHB believes the only solution is a full repeal of the provision.

According to the National Federation of Independent Business, only about half of all small businesses accept credit card payments¹. For many small businesses, they simply cannot afford to pay the fees associated with accepting credit cards. Small businesses should not be forced to accept credit card payments simply to remain competitive with larger corporate entities.

In addition, small businesses will need to continue to track all purchases made regardless of whether the credit card company or the business itself is required to report a payment. The business ultimately bears the responsibility to show that all payments were properly reported.

Lack of Index for Inflation

The \$600 threshold has not been adjusted since 1954. NAHB estimates that in 2010 dollars, \$600 in 1954 is worth the equivalent today of \$4,864. Because the threshold is not indexed for inflation, more and more transactions will trigger these reporting requirements over time. As a result, the burden and costs on small businesses complying with the new reporting requirements will continue to increase over time.

¹ Credit Cards – NFIB Small Business Poll, NFIB Research Foundation, Washington, DC, Volume 8; Issue 3; 2008.

Role of the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Act (SBREFA), requires agencies, including the IRS, to consider the potential impact of regulations on small businesses and other small entities.² The IRS, like many agencies, can circumvent this requirement by issuing guidance. Issuing guidance—rather than a notice-and-comment rulemaking—avoids any serious analysis or consideration of the impact that the new reporting requirements will have on small businesses.

The RFA's mandate that agencies consider the impact of new regulations on small businesses is only required when an agency engages in the formal notice and comment rulemaking process, rather than to less formal guidance. Formal guidance is required by the Administrative Procedure Act (APA) whenever an agency seeks to impose new mandatory obligations.³ When agencies like the IRS fail to adequately consider the APA when issuing new rules, they are able to avoid the rulemaking process and their obligation under the RFA to consider impacts on small business. Although the *Patient Protection and Affordable Care Act* gave the IRS the option to either prescribe guidance or issue regulations, this does not obviate the agency's responsibility to apply the APA to their rulemaking decisions.

This is not the first time the IRS has avoided the RFA's requirements in this way. In fact, the agency's failure to comply with the RFA motivated this committee to amend the Act with SBREFA in the mid-nineties.⁴ SBREFA expressly expanded the scope of the RFA to include interpretive rules involving the internal revenue laws, so long as they are published in the federal register and impose a collection of information requirement on small entities.⁵ The new reporting requirements certainly qualify as collection of information requirements that should be subject to a regulatory flexibility determination.

When given the option to use informal guidance, however, the IRS can do an end run around the RFA. It is important to note that the RFA's requirements are quite minimal as a threshold matter, involving a certification that a rule will not have an impact on a significant number of small entities. Only when an impact is found does the RFA require the more demanding regulatory flexibility analysis. This avoidance is particularly vexing because the IRS has successfully worked through the RFA process in the past. For example, in 2006 the IRS partially withdrew regulations and submitted a revised regulatory flexibility

² Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

³ 5 U.S.C.A. § 552(a)(1); "Rule making is agency action which regulates the future conduct of either groups or persons or a single person . . . [t]he object of the rule making proceeding is the implementation of prescription law or policy for the future, rather than the evaluation of a respondent's past conduct." *Attorney general's Manual on the Administrative Procedure Act* at 15 (1947).

⁴ The Impact of Regulation on Small Business, Joint Hearing Before the S. Comm. On Small Business and the H. Comm. on Small Business, 104th Cong. 13 (1995) (statement of Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Bus. Admin.).

⁵ The legislative history associated with SBREFA explains: "One of the primary purposes of the RFA is to reduce the compliance burdens whenever possible under the statute. To accomplish this purpose, the IRS should take an expansive approach in interpreting the phrase 'collection of information' when considering whether to conduct a regulatory flexibility analysis." 142 Congr. Rec. S3242-02 (March 29, 1996) (Joint Managers' Statement of Legislative History and Congressional Intent).

analysis to proposed regulations that would change like-kind exchanges.⁶ These changes occurred following a slew of adverse comments from stakeholders after the initial regulatory flexibility analysis was conducted. The impacts would never have been meaningfully considered if the IRS had merely issued guidance, as is the case with their implementation of changes to the reporting requirements.

NAHB acknowledges that the IRS, when implementing tax provisions, often lacks the authority to exercise discretion and regulatory flexibility. In many cases, including the implementation of these new information reporting requirements, Congress may effectively tie the hands of the IRS. Of course, there are also circumstances where it is appropriate for the IRS to implement policy through informal guidance. However, if the IRS proceeded to issue regulations on the exemptions provided for independent landlords, for example, the RFA process may yield some relief to impacted parties. Even in cases where the IRS lacks discretion, NAHB believes that Congress and the Administration would benefit from RFA analyses in order to effectively determine the impact of tax changes on small businesses. NAHB would encourage the committee to look further into this issue.

Conclusion

These new information reporting requirements impose a substantial cost burden on small businesses. The collection of additional W-9 forms, monitoring of payments over the course of a year, and additional staff time will cost a small business thousands of dollars per year. Rather than hiring additional workers to expand and grow, small businesses will be hiring accountants and bookkeepers to keep up with these new requirements. The real burden of these new requirements does not only fall on businesses issuing the additional forms. For each small business that will now generate an additional 40, or 80, or 100 new Form 1099s, businesses that sell goods may receive thousands, if not tens of thousands, of additional Form 1099s that they will have to match against their records. Businesses will be overwhelmed.

I urge Congress to move swiftly to repeal the new information reporting requirements imposed by the *Small Business Jobs Act of 2010* and the *Patient Protection and Affordable Care Act*. I applaud the Senate's actions last week to adopt an amendment to the FAA Authorization bill (S. 223) to repeal the new reporting requirements in the *Patient Protection and Affordable Care Act* and urge the House to follow suit. Small businesses would be well served if the House passes H.R. 4, the *Small Business Paperwork Mandate Elimination Act of 2011*, introduced by Representative Dan Lungren.

⁶ 71 FR 6231.

Chairman GRAVES. Thank you, Mr. Kegley.

Mr. Kivett, you have pointed out how many 1099s you are going to have to fill out with this, but I would be curious as to what the rest of you think it is going to do in terms of how many of these you are going to have to fill out. Obviously we have a variety of businesses here. We have a service business. We have a retail store, which has inventory, and I am assuming everything you buy is going to be over \$600 easily, but I would be very curious where you think this is going. How many are you going to have to file? And how much time is this going to take specifically?

I will start with you, Mr. Kegley.

Mr. KEGLEY. Altogether, we are probably averaging about 30 1099s now. And over the last 4 years would have been an average of 150 additional ones for a total of 180 to 200 total forms. That breaks down to about 41 in general overhead expenses, and then approximately about 64 different ones for each and every home that we might build.

Chairman GRAVES. Mr. Shipley.

Mr. SHIPLEY. We have estimated approximately 200, based on how many vendors we currently use; let alone we also buy scrap gold. Anybody that we buy scrap gold from, it creates a personal issue for them; they have to give us their Social Security number, and we run the risk of losing that business.

Chairman GRAVES. Mr. Eagleton.

Mr. EAGLETON. My best estimate is between 60 and 100. Not knowing how many businesses buy meals from me regularly and how many of my customers is kind of an unknown, but for vendors that I buy from for goods and services that I don't pay by check, 61 is my best estimate.

Chairman GRAVES. And we heard from you, Mr. Kivett.

Now just a real quick yes or no question: Does it aggravate you to know that you may have to do this requirement knowing full well that the IRS may not know what they are going to do with this information in the end?

Mr. EAGLETON. Absolutely.

Mr. SHIPLEY. Without a doubt.

Chairman GRAVES. Ranking Member Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. Kegley, as you noted in your testimony, new reporting rules apply for landlords that are in effect now. Do you think that it is likely that many property owners will end up exposed to potential penalties because they are unaware of the new rules?

Mr. KEGLEY. Yes. You are talking about the Small Business Jobs Act of 2010 exempted what we call independent landlords, and that would be people like yourself or me that are just renting one or two homes. And that requirement starts this year and was only published about 3 months before the end of last year. We feel like there has been very little advertising about this requirement, that most landowners are not even aware of it. There is a very high fine for not reporting properly as well.

Ms. VELÁZQUEZ. Can you tell me if the Treasury Department has given any guidance?

Mr. KEGLEY. Not that I am aware of, no.

Ms. VELÁZQUEZ. Mr. Shipley, the IRS has attempted to reduce the paperwork burden on small businesses by exempting credit card payments from 1099 reporting. Unfortunately, many small firms do not accept credit card or debit card payments. Is there a potential small firms may be put at a competitive disadvantage because of the exemption for credit card payments?

Mr. SHIPLEY. I am sorry, could you repeat the question?

Ms. VELÁZQUEZ. The IRS has attempted to reduce paper by exempting credit card payments, but there are some small businesses who do not accept credit cards. My question is, will those small businesses who do not accept credit card or debit card payments be put at a disadvantage?

Mr. SHIPLEY. I think so without a doubt.

I also think a lot of the small businesses that don't accept credit cards right now are on the fringe of going out of business because of that.

Ms. VELÁZQUEZ. And I would like for each one of the members of the panel to answer this question: After health care reform, the IRS mailed small businesses more than 4 million postcards to inform them of the small business health tax credit. So I would like to ask you, do you feel the IRS is adequately working with the business community to answer entrepreneurs' questions on the new 1099 rules?

Mr. Kegley.

Mr. KEGLEY. I think they are not doing so. And really the issuance of a postcard, frankly, I don't really even see all the mail and don't recall ever getting that.

Ms. VELÁZQUEZ. But they did it for small businesses to inform them that as a result of the health care reform bill, there were tax credits. So, on the 1099, have you seen anything coming out of the IRS?

Mr. KEGLEY. Not at all. And if it wasn't for my involvement in the National Association of Home Builders, I wouldn't be aware of it.

Mr. SHIPLEY. Not at all.

Mr. EAGLETON. I haven't seen anything.

Mr. KIVETT. Not at all for me.

Ms. VELÁZQUEZ. Okay. And of course, it is your position that they should do more or better in terms of educating the small business sector as to the new rules regarding 1099.

Thank you, Mr. Chairman.

Chairman GRAVES. Mr. King of Iowa.

Mr. KING. Thank you, Mr. Chairman.

I want to thank the witnesses for your testimony and for making the trip here today to help illuminate this subject matter.

I spent my life in the construction business—we are now in the 35th or 36th year. And it started out with a little, one-man operation. My biggest fear was government regulators. And of those regulators, my biggest fear was the IRS. And now a generation and a half, almost two generations have gone by since then, and I would start with Mr. Kivett and say, is there any agency that you have more trepidation about than the IRS?

Mr. KIVETT. If there is one, I am not aware of it.

Mr. KING. If we can go on down the line.

Mr. Eagleton.

Mr. EAGLETON. Well, certainly in our industry, we worry about Homeland Security, and we also worry about the Department of Labor, but the IRS is number one.

Mr. KING. Thank you.

Mr. Shipley.

Mr. SHIPLEY. Without a doubt, the same.

Mr. KING. And Mr. Kegley.

Mr. KEGLEY. The IRS and the Environmental Protection Agency.

Mr. KING. Ah. I am glad you got that plug in there. I have certainly lived through these things myself.

I am one who has also made a point, and I just make a point of reservation here for the panel and the witnesses and people in the room that we have a larger elephant in the room here—I actually don't think he falls under the species of elephant—and that is the ObamaCare legislation that is the father of this 1099 rule that is before us here today.

It has been real clear where I stand, and I think two-thirds of the American people seek to abolish and repeal ObamaCare in all of its aspects. And I have taken the position that we need to go after the whole thing, and that if we take small parts of it out, that it diminishes some of our resistance.

I would just ask, as I go down the line again, starting with Mr. Kivett—not that we disagree here because I am going to support this legislation, but have you concerned yourself with the idea that if we pull out the most egregious aspects of ObamaCare, we may be stuck with the broader components of it?

Mr. KIVETT. That is a concern. And of course, I think the health care law is the biggest burden on small business today. It is the biggest burden I have seen in the 30-some years that I have run my business has come across. I am not sure how we are going to handle this. Small business will survive, but we are not going to be able to create jobs that are required for the 65 percent that we are supposed to generate. I don't see how we can with this burden on our shoulders.

Mr. KING. And Mr. Eagleton.

Mr. EAGLETON. Thank you.

I really worry about the health care legislation and its impact on my business.

Last year, I did about \$940,000 in sales as a restaurant. My net income after debt service was minus \$500. So any government mandate on my business will force me to close, and 22 employees and my family and I will be ruined.

The health care legislation that is mandated, currently I employ or have insurance on four employees. That cost has gone up from \$11,000 in 2004 to over \$30,000 in 2011. I don't know, if I have to pay for health insurance for my employees, how I am going to survive. I will shut my doors. I don't know how I am going to make it through this.

Mr. KING. And Mr. Eagleton, as I hear this, I think you said \$944,000 in gross receipts, \$500 in net.

Mr. EAGLETON. Negative \$500.

Mr. KING. Negative \$500. Sorry, I missed that. I have lived a little of that myself.

There seems to be an attitude on the part of the administration that even small business is making large margins. And I think they don't understand how much of this is—it is a life that we live because we want to have the freedom to be able to raise our families and do those things that you get from being self-employed. I would just offer that same question to Mr. Shipley and see if he cares to respond.

Mr. SHIPLEY. I agree 100 percent with how you stand on this. It is very difficult. It is something that if, as you all know, being self-employed, there are nights when you lie awake and you wonder, what is going to happen tomorrow. Am I going to be here not only for my salary, but for the people I employ? How am I going to pay them? How am I going to keep this going?

I heard a story, I don't know if this is the best analogy, somebody said if you lifted a stone out in the desert and there was a rattlesnake under it with a bunch of baby rattlesnakes, would you just take care of the big rattlesnake or would you take care of them all? So, as a small business owner and the people I represent, we would agree, the whole thing is scary for us as a small business owner.

Mr. KING. Thank you, Mr. Shipley.

I am watching my clock tick down. I will turn to a little bit different question to Mr. Kegley. And that is that as I listen to the testimony of the witnesses here and their responses, the IRS and the regulations and the burden of these 1099—squeal forms we always called them and I think we still do—what does it do—you are in business. What does it do to the people who are thinking about starting a business when they are staring in the eye the 1099 squeal forms and the weight of the IRS and the other regulations—the EPA that you brought up, Mr. Kegley—what would be the response to whether we will have more or less entrepreneurs in America?

Mr. KEGLEY. I think there will be less because any time government puts up these artificial barriers for new businesses, then it is that much more difficult to start a new business, and there will be less and less of that.

Mr. KING. Thank you. Thank you, Mr. Chairman.

I yield back my negative balance of time.

Chairman GRAVES. Thank you.

Mr. Cicilline. Cicilline, that is Italian?

Mr. CICILLINE. Yes, it is.

Thank you, Chairman Graves. I want to thank you and our ranking member for convening this hearing.

I just want to follow up on that question that was just asked to Mr. Kegley. We are all working hard to build this kind of new innovation economy of entrepreneurship. The President just launched a new initiative, "Innovation America," really focused on that. And I take it everyone would agree with Mr. Kegley that this kind of requirement is likely to inhibit innovation and entrepreneurship by creating this kind of a burden early on in the startup of a business. Is that a fair statement?

Mr. KEGLEY. Yes.

Mr. SHIPLEY. Yes.

Mr. EAGLETON. Absolutely. I met last week with a prospective franchisee for The Egg and I, and they were just trying to pick my

brain and see what it is like to be in business. I told them that I don't know that I would start my business again with the imposing health care burden that is forthcoming.

Mr. CICILLINE. I am actually talking about the 1099 question.

Mr. EAGLETON. Okay, excuse me.

Mr. CICILLINE. But is it the same as the 1099, that that is an additional burden?

Mr. EAGLETON. Absolutely.

Mr. CICILLINE. And I come from a State that has been very hard hit by this recession, Rhode Island, we have the fifth highest unemployment rate in the country. I just was home this past week and convened a group of Business Leaders on Jobs and the Economy, an advisory group, and this is one of the issues they raised, the 1099. I was proud to tell them I am a cosponsor of the legislation to repeal this provision. I think it is very important to small businesses, which are the backbone of our economy in Rhode Island and I think in this country.

But I do think we owe it to you as business leaders and to the American people to be honest about this. The reality is this was a provision which was projected to produce in the last budget year \$22 billion in revenue. My guess is that by stripping away this, it will allow small businesses to grow and we will make that up tenfold; I mean, that is the hope. But we need to be honest about it. We cannot engage in this sort of mental gymnastics to say there is no cost to the repeal.

So I think we should do it. I am a cosponsor of it. But I think we need to be honest with the American people because there is a projection when you build a budget of certain expenses and certain revenues. And the projection by the independent Joint Tax Committee is that it would generate between \$19 billion and \$22 billion in revenue. That is the reality. And so stripping it away, which is the right thing to do, we need to acknowledge that that is a responsibility we have in balancing all of the equities within a budget and making tough decisions.

But this notion that we can repeal it and magically that \$22 billion is erased from the budget, but we don't have to do anything about it is mental gymnastics, and I think we owe it to the American people and we ought to honor your work as great business leaders and entrepreneurs to be honest about that. I am prepared to say it is worth spending that money—we have got to figure out how to do it—but I am not going to just magically say it evaporates. And I think that is what we heard earlier in the hearing today. I think it does a disservice to the American people.

And I thank you for your really powerful testimony about the kind of burden this imposes. I couldn't agree with you more. I heard it firsthand from Rhode Island businesses. I think it is a bad provision. I think it will inhibit small business growth and job growth. And I think at least my sole function of coming to Congress is to get people back to work, to get my State back on the right track and get this country on the right track.

But I think one of the reasons that I came to Congress and saw—confronted some of these great financial challenges that we face is because we haven't been honest about some of the budget implications of what we are doing. I think we have to be honest in

this context to say that is the loss of revenue that will happen and acknowledge it and be able to deal with it like adults. So I hope we can do that on both sides of the aisle.

I thank you and yield back the balance of my time.

Chairman GRAVES. Thank you very much.

We will go to Mrs. Ellmers.

Mrs. ELLMERS. Thank you, Mr. Chairman.

I have a question for all of our panel, and again thank all of you for coming and participating today. I know it is not easy to talk about what is happening in our small businesses today because it is not very positive.

As a small business owner and with the issues that we face in the economy, my question to you is, with the bleak forecast that you have had to weather now and into the future, what effect has that had—I have two questions for you. One, how have you survived this? Have you had to dip into your own personal savings, retirement, things like that, to keep your doors open and to keep the bills paid?

And also, Ms. Velázquez, Chairwoman Velázquez, had mentioned receiving a postcard in the mail with the health care issue, pointing out the advantages to small businesses. Did you get that postcard? And do you see and can you take advantage of that? Because it is my understanding that very few small businesses can actually take advantage of any of those provisions that have been put in place. And thank you.

Mr. KEGLEY. Probably one of the toughest dinners I have ever had at home was about 3 years ago when I had to tell my wife, who started the company with me, that we didn't have a place for her in the family business anymore and she had to go find a job somewhere else.

As far as the health insurance credit, of our seven current employees, five have left the coverage that our company was able to offer to go with a spouse, which was considerably less expensive. So with the two of us that are left, the credit would not be of any benefit at all.

Mrs. ELLMERS. Thank you.

Mr. SHIPLEY. The credit wouldn't benefit us as well. To make ends meet, to answer that question, my wife started back to work again at a local college, and we had to refinance our building and some things like that to keep our payroll paid and taxes.

Mrs. ELLMERS. Thank you.

Mr. EAGLETON. I am not sure how well I am surviving this. I have had 2 years of sales declines, and we have simply not been able to take a lot of money out of the business to live on. So it has been very tough on us. Even the 1099 reporting could force us to close.

I don't recall getting the postcard in the mail, so if I did receive it, I didn't recognize it for what it was and paid no attention to it.

Mrs. ELLMERS. Thank you.

Mr. KIVETT. Well, my company has been in business for 53 years and you kind of plan ahead, hoping that you don't run into these rainy days, but we do. We went through one in 1974. We went through one in the early 1980s, in 1986, and then things went well for a while. And then, of course, we have been in a long decline.

And we have been chipping away at money that we had set aside and hoped to keep and use for expansion, equipment, and we have used that money.

Then we got down to a point that I cut my salary in half. That was 3 years ago, and I don't see a chance for me putting my salary back up. I am hoping to just meet payroll. It is very difficult, and I have been in business for 53 years.

So this is the worst time I have ever seen. And it seems like everything is stacked up against small business. But we will survive. But what is going to happen, we are not going to be able to generate the jobs that you want us to generate because we are going to have to shrink down. We will survive, but we are not going to generate jobs for you. And no, the incentives are not going to help; they have no bearing at all in my business.

Mrs. ELLMERS. Thank you all for your honest and compelling testimony.

Chairman GRAVES. Ms. Chu from California.

Ms. CHU. Yes, I would like to follow up on the issue that Ranking Member Velázquez raised about the credit cards.

One of the difficulties for implementing these 1099 rules is the fact that the IRS is exempting credit card reporting, but sometimes businesses pay vendors using credit cards and a check or cash, so if you have this combination, there is a potential for confusion.

So I would like to ask you, Mr. Shipley, and any of the others, are there times when you make purchases or sales that involve a combination of credit cards and other payment methods? And what kind of challenges would this reporting requirement pose for you?

Mr. SHIPLEY. In the past, I had done more with credit card payments. I have actually gotten away from that because of the stress of worrying about then how to pay the credit card off. I found that was more of a struggle, so I just got to the point where I would only pay with checks.

Ms. CHU. I would like to have any of the others respond to this.

Mr. KEGLEY. We have suppliers that we both pay with check and credit card. A lot of times might be when we first move into a new neighborhood to build a home, we might pay with a credit card on the first few purchases, but then once this person becomes a trusted supplier, we would go ahead and set up an account and pay by check.

Ms. CHU. And would this pose some challenges for you, having this exemption for one aspect of the payment versus the other?

Mr. KEGLEY. I am thinking it might. I don't know how to keep it straight at this point. When we print off a job cost, I wouldn't know how I would know which ones were paid by credit card and which ones were paid with a check. It would take some sort of entry that we are not doing at this current time.

Mr. EAGLETON. Currently, about 90 percent of my transactions when I buy a good or a service is by check. Probably 1 percent is credit card, and the rest is cash. We keep track of all the purchases in our bookkeeping system, but sorting that and categorizing that would just take a lot of additional time and a lot of additional effort.

Mr. KIVETT. We use very little credit cards in my industry. There are no churches that use credit cards, so it would have no effect on me.

Ms. CHU. Well, there is another aspect of this recordkeeping that could be problematic, and that is that the 1099 rules are in compliance with the calendar year system, but we know that some small firms do not use a calendar year bookkeeping method. And they will have to reconcile their accounting system to these new rules. How will this affect you in terms of your business?

Mr. KEGLEY. Let's start with you.

Mr. KEGLEY. We operate all of our small companies on a calendar basis, so it really wouldn't be an issue with us.

Mr. SHIPLEY. As well, we do a calendar basis.

Mr. EAGLETON. Of The Egg and I franchisees, I am the only franchisee that is on a calendar. The rest use a 4-4-5 method because we try and compare similar days and similar weeks to a prior year to predict business trends. It will create quite a bit of work for them to convert that back to a calendar accounting system if they have to.

Mr. KIVETT. And we would have no effect. We use a calendar year.

Ms. CHU. Okay. Thank you.

And I yield back.

Chairman GRAVES. Mr. Coffman of Colorado.

Mr. COFFMAN. Thank you, Mr. Chairman.

Thank you all so much for coming today. I spent 17 years as a small business owner, a majority shareholder in a property management firm, and I remember what the stresses were like and what the hours were like and what the challenges were like. I think I learned how to make payroll and run an organization efficiently enough to make a profit and balance a budget. That is something that Congress could learn.

But I would like all of you to talk about, outside of the 1099 issue, because I think we have had a lot of great testimony on that and there is no question that that is incredibly egregious, but I think from having been in Congress now going on my third year, as a former small business owner, let me tell you, I don't see a lot of, shall I say, knowledge about small business, having come out of the Congress certainly in the last 2 years. I wonder if you could talk about just at any level of the government, what have been your challenges outside the 1099 in terms of whether it is State, local or the Federal Government? What do you need relief from in order to produce jobs?

Why don't we start with you, Mr. Kivett, and we will work our way over.

Mr. KIVETT. Well, of course, the first thing is health care, which we talked about. I am talking the entire bill; that is the biggest burden on us.

The other thing is energy. Our energy costs are just skyrocketing, and it affects all of us. It affects all my suppliers. Anything that is coming in, of course, it is not just gasoline. For example, the theory of cap-and-trade scares us to death. We are already hit hard with energy costs. But the fuel/gas issue, energy issue would be a concern for us.

Mr. COFFMAN. Mr. Eagleton.

Mr. EAGLETON. I would say a couple. One is we need access to capital to grow, and right now lenders still aren't lending. That would be number one.

Number two would be, we are just seeing huge increases in all of our costs of doing business, from oil and gas to commodity prices to feed prices to raw material goods prices. And we can't pass these along. And any regulation that makes that more complex and makes that more expensive hurts us. So those would be my comments.

Mr. COFFMAN. Mr. Shipley.

Mr. SHIPLEY. As Mr. Kivett said, health insurance is obviously a big issue. I feel overwhelmingly taxed all the time, from a small business owner. I feel like every time I turn around, I am getting hit with a new tax or a new fee. I was at a tri-State board meeting last night for local jewelers in our area, and they want to raise the fee on our license for precious metals from \$75 to \$300. It is these things that all the time we get hit with that add up, and that is the tough part as a small business owner.

Mr. COFFMAN. Mr. Kegley.

Mr. KEGLEY. One of the biggest problems our members are having across the country is finding the credit they need to not only keep their businesses running, but to expand those as well. The banks are really valuing our assets at just a few cents on the dollar, and therefore, collateral that was adequate 3 or 4 years ago is not adequate for the loans we have now.

And beyond that is the regulatory burden that we see in construction now from the EPA and OSHA. And all of us builders are outdoorsmen. We are all environmentalists, and we most all want to protect the environment, but the regulations that we are seeing are just about running a lot of people out of business and making it much more difficult to continue our business.

Mr. COFFMAN. Could you all answer one quick question really quick because I am running out of time, and that is simply whether or not you plan on adding employees in 2011, starting with you, Mr. Kivett?

Mr. KIVETT. I am adding no employees. I will cut employees—I have to.

Mr. COFFMAN. Mr. Eagleton.

Mr. EAGLETON. I have a building of 5,000 square feet, and 3,800 square feet of it is my restaurant. I have 1,200 feet next door that I am paying for to be empty. I would love to start another small business in that space that I already pay rent on. If I could find the capital to operate another business and hire more employees, I would do it tomorrow.

Mr. COFFMAN. Mr. Shipley.

Mr. SHIPLEY. No, sir.

Mr. KEGLEY. We sent layoff notices to three more employees on Monday.

Mr. COFFMAN. Well, I want to thank you all so much for coming. I know how tough it is being out there, and the fact that you have all taken time to come here and testify, not only on behalf of your businesses but on behalf of small businesses across America. I really want to thank you.

I yield back my time, Mr. Chairman.

Chairman GRAVES. Ms. Clarke of New York.

Ms. CLARKE. Thank you very much, Mr. Chairman.

And thank you, Ranking Member Velázquez.

I am a supporter of making it easier for small businesses to compete and grow as we continue to turn around the economy. The central Brooklyn district that I represent is filled with commercial corridors of locally owned mom-and-pop small businesses that are a huge part of each neighborhood's unique character. I can appreciate that the President in his State of the Union speech addressed the issue. And while I differ on certain particulars, I do support the policies that keep our small businesses competitive.

So my question to each of you gentlemen is, acknowledging that expanded reporting adversely affects small businesses, what suggestions would you make with regards to the intent of the expanded reporting, which is to enhance the ability to monitor large transactions, without the undue burden that comes with the implementation of this policy? Is there an alternative that you could think of that would meet the same ends but not through the same means, or have you given it any consideration at all?

Mr. KEGLEY. The only consideration that we have thought about is if you raise the threshold beyond the \$600. When it was first enacted in 1954, that was a lot of money, but our economists figure that if you allow for inflation, that would be closer to \$5,000 today.

Ms. CLARKE. Anyone else given any thought to it? Not really? You just think dispensing with it is just ultimately the best thing to do?

Mr. EAGLETON. Correct.

Mr. KIVETT. Exactly.

Ms. CLARKE. And you haven't thought about what we would do around the transaction issue.

Ms. EAGLETON. My only comment would be is, we log every transaction now in our bookkeeping systems. We report all income and expenses already. I don't know why it is up to us as small businessmen to track that for the government so they can tax it or make sure they have gotten their tax on it. I don't think that is our responsibility.

Ms. CLARKE. Okay. What about people who don't pay their taxes?

Ms. EAGLETON. Should that be a small business person?

Ms. CLARKE. I am just asking.

Ms. EAGLETON. I don't know that it should be.

Mr. KIVETT. I agree. I don't think it is our responsibility. We do our part. And of course 86 or 87 percent compliance is pretty good. It is the highest in the world.

Ms. CLARKE. I agree. Thank you very much, gentlemen.

I yield back the balance of my time.

Chairman GRAVES. Ms. West.

Ms. WEST. Thank you, Mr. Chairman, and also Ranking Member Velázquez.

I guess one of the key things, we probably have already discussed it, but for myself, coming out of south Florida in Congressional District 22 where unemployment in Broward County is close to 11 percent unemployment; Palm Beach County is very close to 12 percent. So we are looking at our small businesses, our economic en-

gine there. What would you say are the top two things that we could alleviate off of your backs that will help you to expand and to grow your business and get back to hiring Americans.

Subject to your questions, I will yield back to the chairman.

Mr. KIVETT. My opinion of course is the health care law; that is the number one thing, and of course, any other regulations that are put on us with the EPA, as Mr. Kegley mentioned. The EPA is on us. OSHA, the same thing. Not that we don't need regulations, but adding more and more every year is just hard to understand and comprehend why it is necessary. That is my answer.

Ms. EAGLETON. My answer would be, one is access to capital to expand and grow and provide jobs. Two would be to reduce taxes so that I have more money to hire more people and build my business.

Ms. SHIPLEY. As I mentioned earlier, if there was a way we could reduce taxes, that would help us as a small business owner.

Mr. KEGLEY. I agree with everyone else, with the added comment that if government would just get out of the way, I think we would take care of the problem.

Ms. WEST. But I guess, just codify getting out of the way, because that could go from one extreme to the other. What specifics?

Mr. KEGLEY. I think primarily some of the restrictions that have been put on the banking, as far as limiting the loans that they are able to make to our businesses; the regulations, by the EPA in particular in our industry as well. Some of the mandates about construction techniques and products that are used, and just the lack of—government seems to have the opinion that people can't make up their own mind and can't do what they think is best for themselves. They are wanting to do too much thinking for those folks, and people should be able to act upon their own.

Ms. WEST. Thank you very much, gentlemen.

Mr. Chairman.

Chairman GRAVES. Ms. Mulvaney.

Ms. MULVANEY. Thank you, Mr. Chairman.

And very briefly, I apologize for having to come and go. So many of us have other meetings at the same time, so I appreciate your patience.

I also appreciate your perspective. I am a restaurant owner, have been a homebuilder. I have never built any church pews, but my next door neighbor makes pipe organs, if you can believe that. And as for jewelry, that is another story entirely.

A quick question for Mr. Kegley, because one of the things we are seeing obviously in our market, we are a northern South Carolina suburb of the Charlotte market, and we have a tremendous inventory of housing on the ground, built housing, empty. Traditionally what we would see in this marketplace in a similar type of downturn would be that these would be snapped up oftentimes by individual investors. There was a great article in the Wall Street Journal I think about how this is starting to happen in the Miami market—we are not starting to see it yet—where individual investors are starting to snap up properties, undervalued properties, for the purpose of putting it back into the marketplace as rental property. Tell me a little bit about how you think this bill—excuse me, this provision, if we don't repeal it, would impact our ability to get

people, essentially small business people, entrepreneurs back into that rental property market.

Mr. KEGLEY. I think there are two ways. Number one, as they rehab those rental properties, they are going to have to meet that 1099 reporting requirement. So you are talking about a lot of times a small father-and-son type operation that maybe doesn't have a full-time bookkeeper, so they are going to have to keep better track and report these items. That is going to mean hiring some additional help. It is going to be nonproductive for their business just to keep up with the reporting requirements.

Then with the landlord provisions, they are also going to have to continue those reporting requirements as long as they own that property for any additional repairs or upkeep they have to do. So I think it is going to discourage a little bit of that.

Ms. MULVANEY. And especially at that very small level, at that micro level. If you have one house or two houses, there is only one place you can go to to make up that shortfall, which is raising your rents, which sort of defeats the whole purpose of trying to get the thing back into the marketplace as well.

I agree with you. I am glad to see that we are getting rid of this bill. I am especially glad, by the way, that the President said he supported getting rid of it this year. I remember that he said specifically last year that he would oppose repealing this, and I am glad that he has seen the light.

So thank you, gentlemen, for coming out today.

Chairman GRAVES. I yield to the Ranking Member. Do you have any comments?

Ms. VELÁZQUEZ. No. I just want to take this opportunity to thank all of you. Especially on this committee, we work in a bipartisan way. When we talk about small businesses, there is no Republican or Democratic approach to it. And I am happy to see that there is bipartisan support to repeal 1099.

In the last Congress, in the 111th Congress, Chairman Lungren introduced a—he filed a discharge petition that if he gets 218 signatures, Members to sign into that discharge petition, that will allow for the bill to come to the floor. And so given the fact that the leadership, the President, all of us are supporting repeal of 1099, and given the fact that you are making statements to the fact that this will stifle job creation in America, I don't see any reason as to why we cannot bring this bill to the floor, either this week or next week. And if we don't, then we should file a discharge petition. He has 269 cosponsors, and I would be one of the first to sign onto that discharge petition.

Thank you, Mr. Chairman.

Chairman GRAVES. Thank you, Ms. Velázquez.

And I apologize that my mike is not working, but I do want to thank all of the witnesses for coming today. There is bipartisan support to eliminate this 1099 provision.

There is a little bit of controversy over cost, which is frustrating to me in that this has been estimated to generate somewhere between \$17 billion and \$22 billion worth of revenue, but the fact that this revenue is not being received as of yet because this hasn't been implemented, the notion that that would be a cost to government is very frustrating to me, because I don't understand when

something that the government is not receiving becomes a cost, which kind of brings us to the real issue. And that is that the deficits, whether it is a Republican majority or a Democrat majority, are a result of spending; not as a result of revenue. It is not a revenue problem; it is a spending problem.

With that, I am going to compile all of the information we got today, and I will be sending a letter to the Chairman of the Ways and Means Committee summarizing everything that took place in the hearing.

With that, I would ask unanimous consent that Members have 5 legislative days to submit statements and supporting material for the record.

[Supporting material for the Record follows:]

Statement of The Honorable Jason Altmire
House Committee on Small Business Hearing
“Buried in Paperwork: A 1099 Update”
February 9, 2011

Thank you, Chairman Graves, for calling today’s hearing to examine the potential impact of the 1099 reporting requirement included in the health care reform law.

I am pleased to see the Committee begin its opening session by addressing this onerous regulation. With our economy showing positive signs of growth, now is not the time to burden small businesses with additional paperwork that could potentially slow that recovery. I am a cosponsor of Mr. Lungren’s bill to repeal this particular provision, and I look forward to his testimony as a way to further underscore the need for this regulation to be eliminated.

There is widespread agreement throughout the business community and both chambers of Congress that this regulation will do more harm than good. Additionally, I am pleased the SBA Administrator and the president have both expressed support for the repeal of the 1099 provision. The Senate’s recent adoption of an amendment to repeal the requirement is also a positive step toward lifting the burden imposed on small businesses.

I have been told by small businesses across the district I represent that their operations often rely on multiple small providers for goods and services. It is because of this vital interaction that the 1099 provision is especially detrimental, requiring both provider and recipient to file forms. Large firms have the resources to deal with this paperwork, but small businesses will make up the overwhelming number of entities that will be affected.

The goal of this Committee is to foster growth and encourage an atmosphere of investment for small businesses, and the provision under discussion today accomplishes neither of those goals. I look forward to the testimony of the witnesses today and to working with my colleagues to repeal the 1099 requirement and promote a regulatory environment that allows small business to grow and contribute to our ongoing economic recovery.

Mr. Chairman, thank you again for holding this important hearing today. I yield back the balance of my time.

Opening Statement of Congressman Scott Tipton
Hearing on Health Care Law's 1099 Reporting Mandate
February 9, 2011

Thank you Chairman Graves and Ranking Member Velázquez for convening today's hearing. I would like to join my colleagues in welcoming our panelists as we to examine the 1099 reporting mandate in the President's health care law. I want to especially welcome Mr. Eagleton, as he is from my home state of Colorado.

Last week, I had the opportunity to visit a business incubator in my district, where I sat down with a group of entrepreneurs and had an in-depth discussion about the challenges they are facing during this tough economy. Their story is a common one during these challenging economic times, and it brought back memories of when I started my small business fresh out of college. The Business Incubator Center I visited is in Mesa County, where the unemployment rate has risen to a staggering 10.2 percent—amongst the worst in the nation. It's fair to say that these entrepreneurs—*many* young, and *all* working on tight budgets—have their work cut out for them. They are worried about what the uncertainty of the economic future, and yet their ambition to build a better life, and to create something from nothing, is not deterred. Many have taken loans against their property, scraped together startup funds from friends, family and colleagues. They are doing their best to keep their heads above water while they cultivate their young companies with the hope that the hard work and perseverance will come to fruition, and one day be in the position to expand and hire more employees.

After seeing firsthand the work being done to create jobs and generate economic growth in my district, it's clear that government needs to get out of the way and let small business lead the charge to economic recovery. Economic recovery starts with cutting spending, addressing overregulation, and removing hurdles for small business—like the 1099 reporting requirement that will force entrepreneurs to focus their precious resources on creating mountains of paperwork rather than creating jobs.

Rep. Lungren is right: “We do not have the luxury of thinking of the small business as a constant variable which can easily absorb additional costs of doing business.” This onerous mandate must go.

Again, Chairman Graves, thank you for holding today's hearing. I do have a few subsequent questions at this time.

Opening Statement of Congressman Allen West
Hearing on Health Care Law's 1099 Reporting Mandate
February 9, 2011

Thank you Chairman Graves and Ranking Member Velázquez for today's hearing. I would like to join my colleagues in welcoming our panelists as we examine the 1099 reporting mandate in the President's health care law.

This week, I had the opportunity to meet with SBA Administrator, Karen Mills, along with Workforce Alliance of Palm Beach County Representatives, where I sat down and had an in-depth discussion about the state of South Florida small businesses and explore solutions as to how to better grow these businesses in this difficult economic environment. I've spent the past month speaking with small business owners in the 22nd Congressional District. From loans to the lack of government contract opportunity, I've learned from my constituents that there are many things the SBA could be doing differently to help small businesses.

Small business owners have stated over and over that they do not want to borrow from the SBA they want to reinvest their money from reduced taxes and regulations. If the SBA wants to expand small business access to credit, the SBA needs to enhance access to the sources most of them use for financing.

In speaking with many small business owners in the Congressional District several themes emerged with regard to the Small Business Administration (SBA). The first issue is the SBA loans. Most small business owners do not use SBA-backed loans because loans are not an important source of financing for small businesses. Changes to the 504 loan program and raising the limit on SBA Express loans will not make much difference because so few companies receive them.

Each witness has stated that all pressure could be alleviated off their back if, Members of Congress, lowered taxes for Small Business and repealed the 1099 Mandate. Perhaps most concerning, since businesses with less than 51 employees are exempt from the new mandate requiring employers to provide healthcare, employers are choosing not to grow their businesses beyond a certain level. This rule placed into effect should be removed, due to the fact that so many businesses have limited their employment intake, therefore causing a halt on the production of jobs.

We must rein in Job-Crushing Regulations & Red Tape; stop the Obama administration from imposing a backdoor national energy tax; protect small businesses from ObamaCare's burdensome mandates; and Listen to American job creators.

Congressman Jeff Landry (Coastal Louisiana)

House Small Business Committee Hearing on 1099 provision in health care law

Opening Statement

Thank you Chairman Graves, for calling this hearing and getting this Committee off on the right foot of highlighting burdensome regulations and creating jobs by highlighting a job-killing provision contained in the health care law passed last Congress.

Also, thank you for giving this freshman from Coastal Louisiana the opportunity to serve alongside you and allowing me to speak on behalf of Louisiana's small businesses who are hurting badly by an economy worsened by the nastiest oil spill in history and an economy whose job creating ability will surely be stifled if this provision remains law.

Thank you Congressman Lungren for being here and for your leadership on this issue. Yours was one of the first bills I proudly cosponsored after I was sworn into Congress a little over a month ago.

As a small businessman myself, I certainly understand how daunting it would be for my business to submit a 1099 tax form every purchase made worth over \$600. This provision unfairly treats small businesses and creates an unmanageable accounting burden. In the end, this provision will cost jobs, send many businesses further into debt and make an already difficult struggle to stay afloat, crippling.

SAM GRAVES, MISSOURI
CHAIRMAN

NYDIA M. VELAZQUEZ, NEW YORK
RANKING MEMBER

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2501 Rayburn House Office Building
Washington, DC 20515-6515
February 10, 2011

The Honorable Dave Camp
Chairman
House Committee on Ways and Means
1102 Longworth Building
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
House Committee on Ways and Means
1139E Longworth Building
Washington, DC 20515

Dear Chairman Camp and Ranking Member Levin:

Yesterday, the House Committee on Small Business held the first Congressional hearing on the expanded 1099 reporting requirement that was contained in Section 9006 of the Patient Protection and Affordable Care Act (P.L. 111-148). Unless this provision is repealed, beginning in 2012, nearly 36 million entities, including small and large businesses, non-profits and government agencies will be forced to file 1099 forms on virtually all purchases of \$600 or more with every vendor annually.¹ At a time when we are depending on small businesses to create new jobs and grow our economy, we shouldn't subject them yet another oppressive mandate.

At the hearing, House Administration Committee Chairman Dan Lungren testified about H.R. 4, his bipartisan legislation to repeal Section 9006 of the health care law. H.R. 4 now has 270 cosponsors. Chairman Lungren said Congress should be "looking at ways to create an environment that is more friendly to entrepreneurship. In this regard, the new filing requirement is entirely a step in the wrong direction." In addition, Chairman Lungren said the expanded reporting requirement "conveys the worst possible message to the small business community [and] reflects a disconnect with the day to day reality faced by men and women involved with companies in each and every one of our districts."

¹ Fiscal Year 2011 Objectives, Taxpayer Advocate Service, available at: <http://www.irs.gov/pub/irs-utl/nta2011objectivesfinal.pdf>.

Small business owners testified that the 1099 mandate will impose a substantial and costly paperwork burden, and add to the present climate of uncertainty. John “Mark” Eagleton, franchisee of a small restaurant in Arvada, CO, said, “The practical consequences of the 1099 mandate are staggering for a business like mine. I work with 200 to 300 vendors each year. Not all will reach the \$600 threshold, but since I don’t know who will, I will need to record all the purchases I make. I must buy, install and learn new software, track down each vendor’s taxpayer identification number, and address, key in information for 200 to 300 vendors, compile data onto 1099s, and print and mail forms to vendors and the IRS if my purchases for any one vendor total \$600 for the calendar year.”

Seth Shipley, owner of Shipley’s Fine Jewelry in Hampstead, MD, said, “I estimate that more than more than 1,255 of [my] customers spend more than \$600 a year in my store. According to the government website, it only takes 18 minutes to fill out a 1099 form. Even so, that means approximately 500 more hours of work will have to be devoted to filling out those forms for my customers by my estimate. In addition, I conduct transactions with about 200 jewelry suppliers each year and will invest more than \$600 with each of them. That means an additional 60 hours of work to fill out those 1099 forms.”

R. Jerold Kivett, President of Kivett’s Inc. in Clinton, NC, said, “The new healthcare law and the uncertainty it is creating for small business owners makes it harder for us to determine the cost of running our business. The expanded 1099 reporting requirement included in the healthcare law is a good example of the kind of misguided policy that works against the interest of small businesses.”

All of us support better voluntary tax compliance. But concern has been expressed about the effectiveness of expanded 1099 reporting in improving compliance. As you know, even the Internal Revenue Service’s National Taxpayer Advocate has said that “the new reporting burden, particularly as it falls on small businesses, may turn out to be disproportionate as compared with any resulting improvement in tax compliance.”² In addition, the Taxpayer Advocate expressed doubt about the IRS’ ability to make “productive use of this new volume of information reports.”³

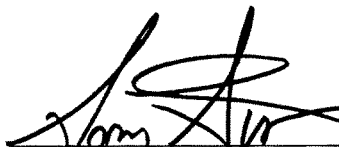
We urge you to keep the concerns of America’s small business owners in mind as

² ² Fiscal Year 2011 Objectives, Taxpayer Advocate Service, available at: <http://www.irs.gov/pub/irs-utl/nta2011objectivesfinal.pdf>

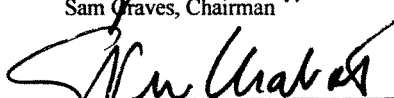
³ Ibid.

you consider H.R. 4 and other legislation to relieve job destroying tax and regulatory burdens.


Sincerely,


Sam Graves, Chairman


Rep. Roscoe Bartlett


Rep. Steve Chabot


Rep. Steve King

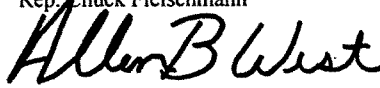

Rep. Mike Coffman

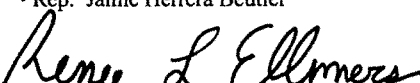

Rep. Mick Mulvaney



Rep. Scott Tipton



Rep. Chuck Fleischmann


Rep. Jaime Herrera Beutler


Rep. Allen West


Rep. Renee Elmers


Rep. Joe Walsh


Rep. Jeff Landry

cc: Speaker John A. Boehner
Minority Leader Nancy Pelosi



February 8, 2011

The Honorable Sam Graves
Chairman
House Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

The Honorable Nydia M. Velázquez
Ranking Member
House Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Graves and Ranking Member **Velázquez**:

On behalf of Associated Builders and Contractors (ABC), a national association with 75 chapters representing more than 23,000 merit shop construction and construction-related firms with nearly two million employees, I am writing in regard to the full committee hearing titled, "Buried in Paperwork: A 1099 Update."

ABC strongly supports H.R. 4, *the Small Business Paperwork Mandate Elimination Act*, which would repeal the overly burdensome Form 1099 reporting requirement that was included in the Patient Protection and Affordable Care Act (PPACA). This new and expanded requirement means that almost every business-to-business transaction is potentially reportable to the Internal Revenue Service. The construction industry is already strained with job loss, with unemployment at 22.5 percent, and adding more bureaucratic layers to an already burdened industry is not conducive to an expedient economic recovery.

Research from a 2010 study released by the Small Business Administration's Office of Advocacy illustrates that the small business community is disproportionately affected by burdensome federal regulations. The study found that small businesses spend more than approximately \$10,600 per employee annually to comply with federal regulations. In fact, the study concluded that small businesses spend three times as much per employee to comply with the federal tax code than larger firms. For the construction industry, excessive regulations translate into higher costs that are eventually passed on to the consumer.

Recently, an ABC member, who is the vice-president of a family-owned small business, indicated that the Form 1099 reporting requirement may force him to hire an additional full-time employee to work in his company's accounting department—the department already employs two full-time employees. Because the ABC member works with 1,200 vendors, of which only 4 or 5 presently issue a Form 1099, the accounting department will be required to spend countless hours on the increased paperwork and filing.

Two years ago, the same ABC member employed 136 employees; however due to the current construction market, he was forced to lay off employees, reducing his staff to 66. Instead of investing in equipment or hiring employees to actually perform work in the field, he may be faced with a huge overhead expense of hiring a full-time employee to solely work on this new burdensome mandate. In order to absorb this additional cost, he may be forced to increase production or charge more. Ultimately, the overhead expense resulting from this new paperwork requirement will have a dramatic effect on the ABC member's bottom line and how he conducts business.


Additionally, ABC members also expressed the following concerns regarding the expanded Form 1099 reporting requirement:

- Businesses would easily have a multitude to request/collect/follow on receipt of W-9's (approximately double what they currently maintain);
- Businesses would have to incorporate a review process to ensure that a W-9 is on file prior to the release of payments (again at least double what is currently maintained);
- Businesses would have to "hold" payments from suppliers until they receive the W-9 which could delay payment, place holds on accounts, delay shipments, etc.;
- What is commonly known today as a "check request" would have to include a process of collecting a W-9 and vendor setup to track for 1099 purposes—which would cause a delay in the turnaround time;
- What are commonly known as "onetime vendors" would probably disappear due to the inability to issue 1099's or even be able to review for year-end purposes;
- Field personnel would become part of the process. Before calling someone out to perform a service, or making over the counter purchases, businesses would need them to be proactive and either notify the office prior to placing the order or collect the W-9 themselves; and
- Additional forms and postage would be an increased cost as well.

Small and family-owned businesses are the backbone of our economy and give Americans a sense of pride and accomplishment. In the construction industry, they provide valuable jobs and play an integral role in building communities. ABC strongly supports *the Small Business Paperwork Mandate Elimination Act* (H.R. 4), which would provide relief to small businesses by repealing the increased reporting and paperwork requirements.

We appreciate your attention to this important matter and look forward to working with you on repealing the overly burdensome Form 1099 reporting requirement.

Sincerely,



Corinne M. Stevens
Senior Director, Legislative Affairs



Owner-Operator Independent Drivers Association

National Headquarters: 1 NW OOIDA Drive, Grain Valley, MO 64029
Tel: (816) 229-5791 Fax: (816) 427-4468

Washington Office: 1100 New Jersey Ave. SE, Washington, DC 20003
Tel: (202) 347-2007 Fax: (202) 347-2008

February 4, 2011

The Honorable Sam Graves
United States House of Representatives
Committee on Small Business
Washington, D.C. 20515

Dear Chairman Graves:

On behalf of the more than 150,000 members of the Owner-Operator Independent Drivers Association (OOIDA), I want to thank you for holding the upcoming hearing focusing on the impact that the expanded Form 1099 reporting requirement from Section 9006 of the Patient Protection and Affordable Care Act will have on small businesses. That requirement will be an unnecessary and costly burden to thousands of small business trucking professionals who are already contending with difficult economic circumstances and a myriad of overly burdensome regulations.

As you may know, the overwhelming majority of trucking companies based in the United States are small businesses, as 93% of motor carriers registered with the Federal Motor Carrier Safety Administration have less than 20 trucks in their fleet and 78% of motor carriers have fleets of just five or fewer trucks. In fact, owner-operator fleets with just one truck represent close to half of the total number of trucking companies registered. While our nation's collective economic wellbeing heavily depends upon small business truckers to move our goods and commerce those entities must contend with consistently increasing costs of operation and regulatory requirements.

The Form 1099 filing requirement in Section 9006 may very well serve as the proverbial "straw that broke the camel's back" for many small business truckers. To give you an idea of how burdensome the new filing requirement would be, on average single truck owner-operators will make well over 100 fuel purchases of \$600 or more during the course of a year, probably closer to 130 or 150 of those fuel purchases. While large trucking companies may have fuel contracts with national truck stop chains, our members will likely make fuel stop decisions more based on location and retail prices which will result in them often dealing with 50 or more fuel vendors during the course of a year.

In addition to the significant paperwork burden the new 1099 requirement would present them related to fuel purchases, almost every equipment maintenance bill our members will have will exceed \$600. In similar fashion to fuel purchases those maintenance costs are apportioned across a wide array of suppliers. Even truckers who do most of their own maintenance will likely do business with at least a dozen different parts vendors.

In short, running a small trucking operation is fairly dynamic and many of our members are going to be expensing out well over \$100K annually on fuel and operational expenses to a large number of assorted vendors. The new 1099 filing requirement would be a paperwork and time consuming nightmare for them.

I would also like to thank you for cosponsoring H.R. 4, the "Small Business Paperwork Mandate Elimination Act of 2011." OOIDA wholeheartedly supports that legislation and other efforts to repeal Section 9006 of the Patient Protection and Affordable Care Act.

Again, thank you for your attention to this important matter. We look forward to working with you to repeal this burdensome and unnecessary filing requirement.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd Spencer", written in a cursive style.

Todd Spencer
Executive Vice President

American Association of Orthodontists

Statement for the Record

House Committee on Small Business

“Buried in Paperwork: A 1099 Update”

Wednesday, February 9, 2011

The American Association of Orthodontists (AAO) is pleased to submit the following statement for the hearing record to the House Committee on Small Business regarding the 1099 reporting requirement as required by the Affordable Care Act of 2010. The AAO appreciates the time and attention the Committee has devoted to this important issue and is grateful for the opportunity to share our concerns regarding the anticipated challenges associated with meeting the new reporting requirement in already challenging times. The AAO supports bipartisan Congressional efforts to repeal the 1099 reporting requirement and hopes today’s hearing will lend the necessary support to move repeal legislation and secure critical relief to the small business community.

Founded in 1900, The American Association of Orthodontists (AAO) is the oldest and largest dental specialty professional association in North America. The AAO is dedicated to advancing the art and science of orthodontics and dentofacial orthopedics, improving the health of the public by promoting quality orthodontic care, and supporting the successful practice of orthodontics.

Who Are America’s Orthodontists?

Orthodontists are uniquely qualified and highly educated dental specialists who correct improperly aligned teeth and jaws. Orthodontists receive an additional two to three years of specialized education beyond dental school to learn the proper way to align and straighten teeth. Only those with this formal education may call themselves “orthodontists,” and only orthodontists may be members of the American Association of Orthodontists. There are currently 9,200 members in the AAO, and applicants must meet the following criteria for membership: (1) complete the full curriculum of an American Dental Association (ADA) accredited dental school plus at least two academic years of an accredited advanced specialty training program in orthodontics; (2) practice solely in the area of orthodontics or be employed full-time by an accredited academic program; (3) be a member in good standing of the American Dental Association; and (4) adhere to the Principles of Ethics of the AAO. The average orthodontist is 48 years old and has 18 years of experience. Currently, approximately 35% of orthodontic residents are females.

Understanding the Orthodontic Patient Population

There are an estimated 4.4 million adolescents and over one million adults in the United States currently being treated by orthodontists, but surveys indicate that half of the nation’s population could benefit from orthodontic care. Nearly 1 in 12 children ages 5 to 17 in America are undergoing

orthodontic care. As health concerns become more prevalent in the adult populations, the rate of adult orthodontic patients is increasing. Today, one out of every five (20%) orthodontic patients is an adult.

Paying for Orthodontic Services

Approximately 60% of today's orthodontic patients have dental insurance that covers some or all of the costs associated with orthodontic care. The vast majority of the patient population uses a variety of financial services to pay for their orthodontic care.

The Business of Orthodontics

Orthodontics is one of America's finest examples of a small business that generates outstanding white-collar job opportunities in communities nationwide. Seventy-five percent (75%) of America's orthodontists are solo practitioners and the mean orthodontic practice employs seven dental service professionals, such as clinical assistants, radiology technicians, receptionists, financial secretaries and business managers for each practicing orthodontist.

Unfortunately, the orthodontic practice is a dental specialty that is often hard-hit by economic downturns, as families often defer what may be perceived as elective healthcare during tough financial times. At the same time, according to recent dental industry surveys, orthodontic practice costs are among the highest in the dental industry. The result is that orthodontic practices have the second lowest profit margins among dentists and all of the dental specialties, making it difficult to sustain orthodontic practices in underserved or rural communities.

Patient Protection and Affordable Care Act of 2010

Orthodontists are impacted by national health reform in each of the three roles we serve. We are health care providers and specialists committed to the health of our patients and the communities we serve, promoting quality dental and orthodontic care for all citizens. Orthodontists are also consumers of health care services. Lastly, and most relevant to today's hearing, we are small business owners, providing important health services to our communities, supporting staff of varying sizes, and pursuing opportunities to grow our businesses to contribute to job creation that will help drive the economic recovery.

Section 9006 of the Affordable Care Act (ACA) requires that all businesses issue Form 1099 to vendors from which they purchase \$600 or more of goods annually and file the information report with the Internal Revenue Service (IRS) effective for payments made after December 31, 2011. The AAO has significant concerns about the potential negative impact this new requirement would have on orthodontic practices and all small businesses, which we believe will ultimately create barriers to growth and job creation. The ACA expands the requirement well beyond the contract work that the tax law was intended to capture, which will impose an excessive administrative burden on small businesses. The average orthodontic practice would have to dedicate significant resources to comply with the law as currently designed. At a time when businesses with fewer than 50 employees

account for more than 60 percent of job losses,¹ it is more important than ever that Congress work with small businesses to ensure that policies do not further hinder the ability to grow, or at least maintain, their business. We also believe the low threshold of the new reporting requirement creates dangerous disincentives for critical capital investments that would improve our practices and better serve our patients and our communities.

For example, Dr. Mark Dake, former chairman of the AAO Council of Governmental Affairs, currently works in an orthodontic practice in West Plains, Missouri where he has practiced for twenty-five years. His practice includes two other orthodontists and 19 staff. The office treats approximately 1,300 patients multiple times throughout the year. If the 1099 is implemented as enacted by the ACA, Dr. Dake estimates that he would need to prepare an additional three hundred 1099 forms. Investments and regular purchases, such as a Christmas lunch for staff, new equipment, supplies, dental laboratory and cleaning services, would require the filing of a 1099 form. Beyond the staff time that must be diverted to identify each transaction, prepare and submit the required forms, it is almost certain that additional software would have to be purchased to keep up with the additional paperwork. These additional overhead expenses would be absorbed by the practice, but would divert any additional resources that might be used to bring on new staff.

The AAO appreciates the opportunity to submit testimony to the Committee for the hearing record and respectfully requests legislative action to repeal Section 9006 of the ACA in support of small businesses.

¹ Bureau of Labor Statistics, U.S. Department of Labor, "Business Employment Dynamics – Second Quarter 2010," at <http://www.bls.gov/news.release/pdf/ccwbd.pdf>.



February 8, 2011

The Honorable Sam Graves
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Graves:

On behalf of the 7,000 companies that belong to the National Association of the Remodeling Industry (NARI), we are writing to thank you for holding this week's hearing titled, *Buried in Paperwork: A 1099 Update*. We are also writing in support of H.R. 4, *the Small Business Paperwork Mandate Elimination Act of 2011*, which would repeal Section 9006 of the Patient Protection and Affordable Care Act (P.L. 111-148). That provision would require businesses to issue IRS Form 1099s to any individuals or corporations from which they buy more than \$600 in goods and services in a tax year.

NARI is a non-profit trade association based in Des Plaines, Illinois. NARI has 58 Chapters in major metro areas nationwide and its membership is comprised of remodeling contractors, local suppliers, and national suppliers. Our Kansas City NARI Chapter is proud to have 116 members who own and operate their businesses in Missouri. NARI's core purpose is to advance and promote the remodeling industry's professionalism, product, and vital public purpose.

NARI members have a reputation as the most highly trained and certified remodelers in America. NARI members voluntarily subscribe to a strict Code of Ethics and Standards of Practice. The training and certification programs run by NARI are the association's hallmark and exemplify NARI's commitment to its core purpose. NARI members are no stranger to local, state, and federal regulatory requirements. The remodelers who belong to NARI are professionals who answer to city, county, state, regional, and federal regulators on various aspects of their work. NARI remodelers pride themselves on assuring customers that work on their homes is done in full compliance with the volumes of code requirements, ordinances, and regulations that govern remodeling work.

NARI joins a chorus of small business interests, including SBA Administrator Karen Mills, and SBA's Chief Counsel for Advocacy, Winslow Sargeant, in calling for repeal of an overly burdensome mandate to expand the use of IRS Form 1099s.¹ While current law requires the issuance of 1099s, Section 9006 would expand requirements to track payments for tangible goods

¹ Statement of SBA Administrator Mills is available at:

http://www.sba.gov/idc/groups/public/documents/sba_homepage/news_release_10-67.pdf

Statement of SBA Chief Counsel for Advocacy is available at: <http://www.sba.gov/advo/press/10-15.html>



in addition to what is currently required for services. Additionally, the current rules for issuing 1099s would be expanded to include issuing the IRS forms to corporations, not just to individuals as the current law requires. IRS estimates that 40 million taxpayers would be subject to the new 1099 filing requirements starting in 2012.

According to a survey conducted by the National Association for the Self-Employed, small businesses receive an average of 4 Form 1099s from clients or customers and issued an average of 2 Form 1099s annually to contractors under the current system. Under Section 9006 of the new health care law, small business owners who answered the survey estimated they will have to issue 27 Form 1099s, a 1250 % increase in paperwork burden.² The burden imposed by Section 9006 is magnified further by tracking and recordkeeping requirements that accompany the new federal mandate.

According to research by the U.S. Small Business Administration's Office of Advocacy, the cost of complying with federal regulations totals more than \$1.1 trillion.³ That equates to an annual cost of \$10,585 per employee for firms with fewer than 20 employees. This burden is disproportionately harsh on small businesses. The SBA research shows that small firms shoulder 36% more regulatory compliance costs than their larger business competitors. 83% of NARI members have fewer than 20 employees and the findings in SBA's study represent how NARI members are impacted by federal mandates. It should be no surprise that 97% of the 1,109 NARI members who responded to a survey last month supported repeal of the 1099 requirement.

Small businesses are the engine of the U.S. economy and NARI is proud to represent a segment of the small business service sector that improves the lives of homeowners one remodeling project at a time. NARI thanks you for holding the hearing and hopes your action will prompt your House colleagues to repeal the 1099 requirement contained in Section 9006 of the new health care law. We thank you for your attention to the advocacy efforts of the small business community.

Sincerely,

Mary Busey Harris, CAE
NARI Executive Director

² Over 300 small business owners participated in the survey in May, 2010. For more information, see http://nase.org/about/pressreleases/10-05-25/New_Law_Increases_Paperwork_for_Self-Employed_Over_A_Thousand_Percent.aspx

³ Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," SBA Contract Number SBAHQ-08-M-0466 (September 2010). Study available at: <http://www.sba.gov/advo/research/rs371tot.pdf>



The Computing Technology Industry Association

Before the

House Small Business Committee

Form 1099 Reporting

February 9, 2011

Dear Chairman Graves, Ranking Member Velázquez, and Members of the Committee:

We want to thank Chairman Graves and Members of the Committee for holding this important hearing to highlight the new Form 1099 reporting requirement, which should be repealed. We also want to thank this Committee for its vigilant work in responding to issues that are important to small businesses. We believe that your efforts to maintain public attention – and importantly, the attention of Congress – on the needs of small businesses are vital to our economic vitality.

About CompTIA. The Computing Technology Industry Association (CompTIA) is a non-profit trade association representing the information technology (IT) industry. CompTIA represents over 2500 IT companies, the majority of which are small businesses. Our members are at the forefront of innovation and provide a critical backbone that supports broader commerce and job creation. These members include major computer hardware manufacturers, software publishers, and service providers; the distribution partners that bring these products and services to market; and small IT services businesses called value added resellers (VARs), who are the final service providers in the channel of IT commerce.

CompTIA works with both our members and other stakeholders to develop and advocate public policies that advance the interests of the IT industry and our

member companies. CompTIA is the leading global provider of vendor neutral certifications, with and for the IT industry, such as: CompTIA A+, CompTIA Security+ and CompTIA Network+.

These certifications enhance American competitiveness by:

- Helping American workers secure jobs and progress in their IT careers;
 - Helping dislocated workers develop new skills for entry into the IT sector;
- and
- Serving as the skills standards by which educational institutions train to meet the industry driven qualifications of the IT technical workforce.

Current Form 1099 Reporting.

Under current law, businesses are required to provide a Form 1099-MISC to any individual or unincorporated entity to whom that business paid \$600 or more for services during a calendar tax year; payments for services to corporations are exempted. Clearly, this reporting requirement was intended to bring independent contractors into compliance in reporting income from services. Of course the reasoning was that if payments were reported to the IRS, the recipient would properly report those same payments as income. So under the requirement currently in effect, the IRS requires a Form 1099-MISC to be filed only for payments made to individuals (or unincorporated entities) for services.

The New Requirement.

The new Form 1099 reporting requirement was enacted under §9006 of the Patient Protection and Affordable Care Act, also known as healthcare reform. Under this provision, beginning in 2012, any business that pays a single vendor for goods or services valued at \$600 or more during a calendar year must provide that vendor with a Form 1099-MISC, and this Form 1099-MISC must also be provided to the IRS. Of course, this sounds simple, but what does this really mean? If a business hires an accounting firm to prepare its tax returns, that business must provide the accounting firm with a Form 1099-MISC, which must also be provided to the IRS. If that same business buys a computer for \$600 or more from Costco, the business must provide Costco with a Form 1099-MISC. Whether a business pays for goods or services – either to a corporation or individual, payments tallying \$600 or more during a calendar year must be reported both to the IRS and the recipient on a Form 1099-MISC.

CompTIA Position.

CompTIA believes this provision has a disproportionately negative effect on small businesses and should be repealed forthwith. Some would assert that this provision was enacted in an effort to close the tax gap, however, it is not clear that this provision would further that goal.

As opposed to addressing the tax gap, the apparent rationale for including this provision in the health care reform bill was to raise revenue. Clearly, the authors of the health care reform bill were searching for revenues to offset the cost of the legislation, and this unlikely reporting requirement was hastily added. This was all done without proper consultation or discussion with the business community. Although the Joint Committee on Taxation estimated this new 1099 reporting requirement would bring in \$17.1 billion over 10 years, this figure is questionable. What is not debatable is that this provision would burden small businesses with additional costs: Recordkeeping, compliance and accounting fees are a few of the general categories.

For example, one of CompTIA's members, Tom Boozeman of PCSOS in Arlington, TX, determined that based on his last three tax years, his company would be required to file 2.3 times the number of 1099s under the new law as compared to the current law. Mr. Boozeman estimates the additional compliance cost would be about \$5,000. While this might not be an exorbitant financial hardship to the largest

U.S. companies, it is yet another cost that inhibits Mr. Boozeman's company, PCSOS, and other small businesses from using that money to create new jobs. This additional compliance cost will hinder Tom and others from growing their businesses.

A number of our other members provided input on how this new 1099 requirement would affect their businesses:

- One California member has 25 employees and provides IT management, monitoring and security. For the 2009 tax year, this business filed 25 Forms 1099; under the new requirement, it estimates that it would have file about 300 forms, an increase of 275 forms for an 1100% increase. This member also noted that it would also need to make an initial capital investment to upgrade and install accounting software.
- Another member company that provides IT Training in numerous states with 150 employees filed 189 Forms 1099 for the 2009 tax year; under the new requirement it estimate that it would have been required to have filed about 550, an increase of 191%. The business also notes the increased burden after filing, which results from reconciling these forms with the IRS.

- Another member in New Hampshire with 5 employees did not file any Forms 1099 during 2009, but estimates it would have been required to file about 24 under the new requirements.

In its 2010 publication, "General Instructions for Certain Information Returns," the IRS notes that the Paperwork Reduction Act estimated time required to prepare a Form 1099-MISC is 16 minutes. Using this estimate, it would take 73.33 hours for our first member to file the additional 275 forms. At a cost of \$100 an hour for an external accountant, the added cost would be \$7,333; at a cost of \$200 per hour, the additional cost would be \$14,666. However, assuming this can be done in house, even at a lower rate of \$50, the additional cost to this business would be \$3,666. So you can clearly see, the cost of filing a few extra forms is unnecessarily burdensome to a small business.

In fact, the additional compliance costs that will be imposed on businesses will likely exceed the \$17.1 billion in revenue that the Joint Committee on Taxation estimated this provision would raise. This new burdensome requirement is just bad policy and harmful to small business.

We have seen this before.

Inventing ways to find new revenue sources is becoming commonplace in DC. In the last Congress, a provision requiring a 3% withholding on most all government contract awards became law under a similar scenario. Like the current Form 1099 reporting provision, the 3% withholding tax was not disclosed or discussed with the business community prior to enactment. The effective date for that provision (on which we testified before the House Small Business Committee) has already been delayed a number of times but has not been repealed.

Repeal Legislation Supported.

CompTIA fully supports passage of the *Small Business Paperwork Elimination Act* (H.R. 4 in the House and S. 18 in the Senate). As drafted, this legislation simply repeals Section 9006 of the Patient Protection and Affordable Care Act. This is the most logical and expedient approach. This provision should never have been enacted.

Conclusion.

U.S. small businesses do not need new filing burdens and costs, especially in a time when the economy suffers and jobs are scarce. Even though this new reporting provision does not constitute a new business “tax,” its effects are the same.

Increased IRS reporting results in additional compliance costs, and this has a disproportionate effect on small businesses. Small businesses should not be forced to bear this burden. These requirements are too extreme and the associated costs are too high. CompTIA urges immediate, bipartisan action to repeal this provision.



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

Statement for the Hearing Record

"Buried in Paperwork: A 1099 Update"

House Small Business Committee
U.S. House of Representatives

February 9, 2011

Introduction

The National Association of Chain Drug Stores (NACDS) is pleased to offer this statement in connection with the Committee's hearing entitled, "Buried in Paperwork: A 1099 Update." NACDS supports legislation to repeal the 1099 reporting requirements that were enacted as part of the Affordable Care Act (Public Law 111-143) and we applaud the committee for convening a hearing to focus on this problematic issue. While NACDS shares the concerns of the broader business community about the additional administrative burdens and costs associated with the 1099 reporting requirement, chain pharmacies, as healthcare providers, are also deeply concerned the mandate could hinder the delivery of patient care.

NACDS represents traditional drug stores, supermarkets, and mass merchants with pharmacies. Its more than 137 chain member companies include regional chains with a minimum of four stores to national companies operating in nearly every state. Chain community pharmacies operate 39,000 pharmacies, and employ a total of more than 2.7 million employees, including more than 118,000 full-time pharmacists. NACDS members fill more than 2.6 billion prescriptions yearly, the equivalent of about 72% of all prescriptions in the United States. Retail stores with pharmacies are valuable economic and business resources in their communities paying nearly \$23 billion in state taxes annually. The total economic impact of retail stores with pharmacies reaches well beyond their \$830 billion in annual sales. Retail stores with pharmacies have a total economic impact of \$1.57 trillion, based on 2009 data. That is the equivalent of approximately 11% of the gross domestic product. Every one dollar spent in these stores creates a ripple effect of \$1.96 throughout other segments of the economy.

The Role Of Neighborhood Pharmacies

The primary function of retail chain pharmacies is to assist individuals in the communities where they operate with their healthcare needs. While the convenient, safe and efficient dispensing of prescription medicines is a core function of the modern neighborhood pharmacy – and one our members take very seriously -- NACDS members do much more that positively impacts the lives of their customers and patients. Today's pharmacies offer a variety of preventive healthcare services including immunizations and

vaccinations, smoking cessation clinics, health screening services, disease management services and routine advice on the best and most effective over-the-counter products for patients' specific needs. Americans trust their neighborhood pharmacies to provide these services, which is one reason pharmacists have ranked in the top three each of the past eight years in Gallup's annual survey of integrity across all professions.

Medication Adherence and Medication Therapy Management (MTM)

One of the most important roles that pharmacies play is in helping Americans take their medications in the safest most effective manner possible. Millions of Americans fail to take their medications appropriately. Poor medication adherence costs the U.S. health system \$290 billion annually, equal to 13% of total health expenditures. (New England Healthcare Institute, 2009). In addition, poor adherence also leads to \$100 billion in hospital readmissions annually. (New England Journal of Medicine, April 7, 2010.) NACSD believes this is an unacceptable amount of waste that needs to be addressed.

The best way to make sure Americans use medications most effectively is through a complete medication review and professional counseling services offered by qualified pharmacists, otherwise known as "medication therapy management" (MTM). MTM helps prevent medication errors, ensures medication compliance and gets patients more involved in their medication therapy. Evidence shows that MTM improves outcomes and reduces unnecessary medical services, producing a very high return on investment.

Congress has recognized the importance of MTM on a bipartisan basis. The Medicare Modernization Act of 2003 created the Medicare Part D drug benefit and specifically included MTM as a required offering. In addition, the health reform legislation of 2010 made improvements to the Medicare Part D MTM benefit and established grant programs for MTM in treating chronic diseases and in care provided in the new "medical home" model. While these steps are welcome, more needs to be done to control the huge costs associated with medication non-adherence and to improve access to MTM services. NACDS supports S.274, the Medication Therapy Management Empowerment Act of 2011, which will strengthen and improve access to the MTM benefit in Medicare Part D. A bipartisan companion measure is expected to be introduced soon in the House.

1099 Requirement May Interfere with Patient Care

Because Americans rely more and more on their neighborhood pharmacies for important healthcare services, our industry resists the imposition of additional administrative mandates, especially those that distract from their role as providers of patient care services. The 1099 mandate is a prime example of an administrative mandate that will interfere with pharmacies' ability to furnish convenient and cost effective healthcare.

The provision would require businesses to report to the Internal Revenue Service on a 1099 form any payment of \$600 or more to an individual vendor. This would dramatically increased data collection and reporting requirements putting a tremendous and costly administrative burden on accounting departments in every organization in America, including neighborhood pharmacies. If fully implemented, the provision would impose substantial paperwork and reporting burdens forcing our members to institute

new and complex record-keeping data collection and reporting requirements that track every purchase by vendor and payment method.

Pharmacies are the face of neighborhood healthcare and are a highly trusted source of healthcare information, products and services. The 1099 reporting requirements will force pharmacies – whether large national companies or small local drug store chains – to spend inordinate amounts of time and human resources on additional paperwork. This will take away from the time that pharmacies and pharmacists have to help patients address their medication and other healthcare needs.

Again, NACDS supports repeal of these overly burdensome requirements, to help ensure that American pharmacies can continue to focus on their patients, not needless paperwork.

We thank the committee for the opportunity to offer this statement and applaud you for highlighting this important issue with this hearing. If you have any questions, please contact Paul T. Kelly, Vice President, Federal Government Affairs, National Association of Chain Drug Stores, 413 North Lee Street, Alexandria, Virginia, 22314, (703) 549-3001 or pkelly@nacds.org.



WWW.NCPANET.ORG

**Statement of the
National Community Pharmacists Association**

"Buried in Paperwork: A 1099 Update"

**United States House of Representatives
Committee on Small Business**

February 9, 2011

THE VOICE OF THE COMMUNITY PHARMACIST

100 Daingerfield Road
Alexandria, VA 22314-2888
(703) 683-8200 **PHONE**
(703) 683-3619 **FAX**

Chairman Graves, Ranking Member Velazquez, and Members of the Committee, the National Community Pharmacists Association (NCPA) is pleased to submit the following written comments for inclusion in the record of today's hearing, Buried in Paperwork: A 1099 Update. We commend you for holding this hearing given the negative impact that the health care reform expansion of Form 1099 reporting requirements will have on small businesses, such as community pharmacies.

The NCPA represents the interests of America's community pharmacists, including the owners of more than 23,000 independent community pharmacies, pharmacy franchises, and chains. Together they represent a \$93 billion health-care marketplace, have more than 315,000 employees including 62,400 pharmacists, and dispense over 41% of all retail prescriptions. NCPA members are the primary providers of drugs and pharmaceutical supplies to millions of Americans. NCPA members are also small businesses that will be forced to file many new 1099 tax forms under the new reporting requirements, which will be a burdensome, costly and time consuming process for them. Accordingly we urge Congress to repeal the health care reform expanded Form 1099 reporting requirements.

Congress should Repeal the New 1099 Reporting Requirements because they Place Extensive and Unnecessary Burdens on Independent Community Pharmacies

The new Form 1099 reporting requirements will impose heavy and harsh burdens on small businesses, such as independent community pharmacies. These new Form 1099 reporting requirements essentially require independent community pharmacies to report and file a Form 1099 for payments made to each corporation for goods purchased that total \$600 or more per year. This new burdensome reporting requirement poses a significant problem for independent community pharmacies because of the low \$600 trigger point for filing the Form 1099 and the number of vendors from whom independent pharmacists purchase goods on an annual basis.

Independent community pharmacies maintain a very expensive inventory. Pharmaceutical drugs and supplies are not low cost products and, therefore, monies paid by the average independent community pharmacist to each drug vendor or drug wholesaler will easily surpass the \$600 filing threshold. We estimate that the average pharmacy works with 50 to 100 drug and medical supply vendors on an annual basis, which means they will have to file 50 to 100 Form 1099's on an annual basis for their drug and pharmaceutical supply purchases alone. Presently, for these purchases, independent community pharmacies file none. The large number of drug and supply vendors combined with the high cost of the goods being purchased means that independent community pharmacists will have to file a disproportionately large number of Form 1099's on an annual basis, in relation to other small business owners, just for their drug and pharmaceutical supply purchases.

Along with their drug and pharmaceutical supply inventory, most independent community pharmacies maintain an inventory of "front end" items. Such items include over-the-counter drugs, health products, greeting cards, books, magazines, toys, seasonal items, sundries,

beauty products, and food and drink items. Along with serving as a source for individual pharmaceutical needs, independent community pharmacies also serve as sources for the purchase of common food and non-food household items. With regard to these goods, we estimate that the average independent community pharmacy holds 50 to 100 accounts with “front end” vendors, in addition to the 50 to 100 accounts that they hold with drug and supply vendors. Even though some of these goods are low cost, on an annual basis the amount of money paid to each vendor for these goods easily surpasses the \$600 threshold. Because of the number of vendors at issue, independent community pharmacists, under the new Form 1099 reporting requirements, will be forced to file an additional 50 to 100 Form 1099’s for these “front end” goods that they purchase on an annual basis. Presently, independent community pharmacies do not file any Form 1099’s for “front end” item purchases. Combined with the pharmaceutical-related Form 1099’s, this means that the expanded reporting requirements will require the average pharmacy to file between 100 and 200 additional Form 1099’s.

In addition to the burden of filing hundreds of new Form 1099’s, many community pharmacies will also be subject to existing tax reporting regulations that require the electronic submission of all tax reporting filings if more than 250 informational returns of any type (including W-2’s, 1099’s, etc) are filed by any taxpayer for any one tax year. In other words, the Form 1099 reporting requirement expansion will result in an increase in the number of small business pharmacies required to file their returns electronically. This, in turn, is likely to require the pharmacies to either make additional investments in data processing systems in order to comply with the electronic filing regulations or increase their payment of professional fees if such reporting requirements are to be outsourced.

Conclusion

Independent community pharmacies are small businesses with an average of only 11 employees. With limited staff resources, independent pharmacists devote as much of their time and effort as possible to helping their patients. They spend significant face-to-face time counseling and monitoring their patients to ensure that those patients are taking the correct drugs and are taking them in the correct manner. The counseling and monitoring function of independent community pharmacists improves patient health outcomes and in the long run saves healthcare dollars for payers, including Federal healthcare programs. Patients are better able to manage their illnesses, which may otherwise become extremely costly if left unchecked. To impose upon small business independent pharmacies this new massive paperwork filing burden only serves to divert resources away from patients and improving health outcomes, and instead direct those resources of time, money and effort toward bureaucratic tax requirements. Accordingly, NCPA urges Congress to repeal the expanded Form 1099 reporting requirements.

Thank you for the opportunity to submit this statement for the record.



Statement of the U.S. Chamber of Commerce

ON: "Buried in Paperwork: A 1099 Update"

TO: THE HOUSE COMMITTEE ON SMALL BUSINESS

DATE: February 9, 2011

The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

**Statement for the Record on
 "Buried in Paperwork: A 1099 Update"
 Submitted to
 THE HOUSE COMMITTEE SMALL BUSINESS
 on behalf of the
 U.S. CHAMBER OF COMMERCE
 February 9, 2011**

Chairman Graves, Ranking Member Velázquez and distinguished members of the Committee, thank you for allowing the U.S. Chamber of Commerce to submit the following testimony for the record on "Buried in Paperwork: A 1099 Update". The Chamber has tremendous concerns with the new reporting requirements contained in §6041 of the Internal Revenue Code (IRC), as amended by §9006 of Title IX of the Patient Protection and Affordable Care Act (the "Affordable Care Act" or "PPACA").¹ This section has been commonly referred to as the "1099 reporting mandate" and the Chamber commends your efforts in having this important hearing to further understand and explore the impact of the 1099 reporting mandate on small business.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Overwhelming Call to Fully Repeal the 1099 Mandate

Before addressing the policy implications of the 1099 reporting mandate, it is critical for Members of Congress to fully appreciate the perspective of actual small businesses on this significant issue beyond the witnesses with you today. Recognizing the impact this harmful provision will have on the business community, the U.S. Chamber of Commerce has organized a coalition of approximately 2,700 organizations, chambers and businesses from across all 50 states and employing millions of American workers. **Each has signed onto our letter calling on Congress to repeal the 1099 reporting mandate without raising taxes on any segment of the business community.** The sign-on letter is located on the Chamber website at: <http://www.uschamber.com/issues/letters/2010/national-sign-letter-repeal-1099-provision-health-care-law>

In addition to the letter, the Chamber believes it is important that you hear from some of these small businesses in their own words on what the 1099 reporting mandate would mean for them. To that end, the following are quotes from small business owners and local chamber

¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §9006, 124 Stat. 119 (2010)

executives located in districts representing the Members of the House Committee on Small Business.

Call for repeal from the House Small Business Committee Member's districts

"For 16 years, we have worked hard to establish our credibility and expertise in selling numismatic items. We are a small company with many faithful customers. The requirements of the 1099 mandate will put us out of business. Please repeal this mandate."

Dave & Cheryl Weaver
Owners
Weaver Coin Auction
Easton, MO
Missouri's 6th Congressional District

"I don't understand the need for it. It's just more paperwork that serves no purpose. But it will cost me more to comply. They need to repeal it."

Roxanne Taylor
Owner
New York Oil Recovery Co
Brooklyn, NY
New York's 12th Congressional District

"The 1099 mandate hits small businesses disproportionately hard and it does nothing to improve the competitiveness of U.S. businesses. I have major concerns about security and identity theft with the prospects of this many SSNs and EINs floating around. I will be writing and calling our U.S. Senators and Congressmen in the areas that we operate to ask them to support a full repeal."

John Olson
Chief Financial Officer
Willard Agri-Service
Frederick, MD
Maryland's 6th Congressional District

"Unlike the Federal government which can print money and hire people at a whim, small business will be unnecessarily burdened to follow the guidelines of the covertly inserted 1099 provision in the mostly un-read health reform law Congress passed last year. Increasing the tax reporting paperwork 12-fold for small companies like Appalachian Log Structures would require us to hire additional staff. We're in the housing industry and in the current distressful economic climate that was caused by irresponsible Government oversight and thoughtless banking regulations; we are not able to add to our staff to cover this new requirement."

Donald Parsons

Co-Owner
Appalachian Log Structures
Gaffney, SC and Ripley, WV
South Carolina's 5th Congressional District

"This is another regulation that will force small businesses to deal with more red tape instead of growing their businesses and creating jobs. Small businesses like ours are doing several jobs at once to remain competitive in this recession and government should be encouraging economic growth, not stifling it."

Sandra Westlund-Deenihan
President
Quality Float Works
Schaumburg, IL
Illinois' 8th Congressional District

"As a small business owner, I do not have the luxury of having a staff to assist in bookkeeping and reporting. Any additional requirements, no matter how small, require additional time away from my job which is sales. The added burden of further 1099 reporting requirements along with a weak economy will threaten my ability to stay in business. I would like to ask Congress to repeal the 1099 mandate and reconsider any legislation that would further impede the ability of business to grow and pull us out of this economic recession."

Joanne Nelson
Owner
Mountain Man Nut & Fruit Co
Rifle, CO
Colorado's 3rd Congressional District

"As I understand the requirement, among other things, I will have to have a book keeper total all the amounts we spend on office supplies, computer paper, etc. then report that to some agency who will then try to correlate our purchases with hundreds of similar accounts and then be able to reconcile that to what, vendor reports?? It'll never accomplish anything but adding costs to my business."

Rudy H. Walldorf, CCIM
President
Herman Walldorf & Co., Inc.
Chattanooga, TN
Tennessee's 3rd Congressional District

"It's a costly provision that doesn't do anything to help us grow our business or add jobs. It needs to be repealed. The bottom line is we need less government intervention; not more."

Charles Armitage
CEO

Uncle Charley's Sausage
Vandergrift, PA
Pennsylvania's 12th Congressional District

"This law will create one job in my company; a new full time position just to do this unnecessary burdensome work. Of course, that only reduces my resources to really grow my business. Please repeal the 1099 reporting mandate."

Ricky Young
Owner
Young's Auto Center & Salvage / Car Crushers
Benson, NC
North Carolina's 2nd Congressional District

"The 1099 reporting mandate would add significant cost to our company. One thing that goes over looked is that we will also be required to have W-9's on ALL vendors. I ran the numbers based on figures from 2010 to include the 1099 mandate, and it would require us to send 8 times the amount of current form 1099s. Not to mention that the IRS increased the fines by an additional 50%, from \$50.00 to \$100.00 per 1099 return. By the way, will I need to send the IRS a form 1099?? Please repeal this bad idea."

Lori Smith
President
Artisan Restoration
Cincinnati, OH
Ohio's 1st Congressional District

"The Northern Rhode Island Chamber of Commerce thinks this is a classic case of unintended consequences. Imagine picking up donuts every Friday for your staff meeting and then having to send the donut shop a 1099. Or how about a 1099 for your cell phone bill. Does the U.S. Post Office get a bill if we use over \$600 a year in postage?

We hope that the committee will see the challenge this would present to small businesses on both sides of the transaction.

Keeping track and then sending 1099s to your vendors and then the flood of 1099s you would receive from your customers. Small businesses need time to run their business; not to spend it on paperwork."

John C. Gregory, IOM
President/CEO
Northern Rhode Island Chamber of Commerce
Lincoln, RI
Rhode Island's 1st Congressional District

“Increased costs from the 1099 reporting mandate will heavily penalize honest taxpayers, creating an even more unlevel playing field for those of us who pay our fair share of taxes.”

Jeanette Aultz
Owner
Costumes by Jeanette
Brooklyn, NY
New York’s 11th Congressional District

“This mandate is going to cause a tremendous burden on small companies such as ours which has a very small accounting staff. My time is better spent on operating our company than trying to capture revenue reporting so that the IRS can go after taxpayers who continue to avoid taxation or under reporting of income.”

Peter Louviere
CFO
Vision Communications
Larose, LA
Louisiana’s 3rd Congressional District

“Instead of focusing on my business, this mandate saps my precious resources to fill out mounds of paperwork for the government. I hope Congress does the right thing and repeals it.”

Robert Clager
President
Rental Time General Rental Center Inc.
Gibsonia, PA
Pennsylvania’s 4th Congressional District

The following small business owners and local chamber executives from the rest of the House Small Business Committee member districts “stand united in calling for Congress to repeal Section 9006 of the ‘Patient Protection and Affordable Care Act’ before it comes into effect in 2012.”

Don VandenBosch
President
Pollema Manufacturing Inc
Rock Valley, IA
Iowa’s 5th Congressional District

Julie Aronson
Owner
Parkglenn Self Storage, LLC
Parker, CO
Colorado’s 6th Congressional District

Steve Benjamin
President
Performance Wire & Cable, Inc.
Camden, NY
New York’s 23rd Congressional District

David Waller
President
Waller Insurance Inc.
Vancouver, WA
Washington’s 3rd Congressional District

James Batmasian
Owner
Investments Limited
Boca Raton, FL
Florida's 22nd Congressional District

Diane Gurber
Owner
Gruber & Associates, PC
West Lin, OR
Oregon's 5th Congressional District

James Bailey
President
JB Livery Service, Inc.
Weymouth, MA
Massachusetts' 10th Congressional Dist.

Marilyn Dimitroff
President
Capelli Financial Services, Inc.
Bloomfield Hills, MI
Michigan's 9th Congressional District

William Dissen
Owner
The Market Place Restaurant
Asheville, NC
North Carolina's 11th Congressional District

William St. John, Jr.
President
W. R. Zanes & Co. of La., Inc.
New Orleans, LA
Louisiana's 2nd Congressional District

Lisa Bailey
CEO
Irwindale Chamber of Commerce
Irwindale, CA
California's 32nd Congressional District

Background

Under §6041 of the (IRC), all persons engaged in a trade or business who make payments in the course of such trade or business totaling at least \$600 to another person in a single year are required to file an information return to the IRS. For payments made prior to January 1, 2012, generally speaking, reportable transactions were limited to governments, non-profits or businesses (purchasers) that made purchases for services from self-employed, independent contractors (vendor). For payments made after December 31, 2011, the Affordable Care Act expanded the information reporting requirements by removing the longstanding exemption for payments to corporations and included property (goods) as well as services as reportable.

Transactions are typically reported by the entity using a Form 1099-MISC information return to the IRS setting forth the amount, name, address, and taxpayer identification number (TIN) of the vendor. The information return filings are usually required to be made to the IRS by February 28 of the following year in which the payments were made, or March 31 if filed electronically. Copies of the information returns must be provided to the vendors no later than January 31. The taxpayer typically collects the information by requiring the vendor to fill out an IRS Form W-9 prior to being paid.

If the vendor is unwilling to provide the purchaser with a TIN, then the business is required to withhold 28 percent of what is owed and forward it to the IRS. If the TIN that they give the business does not match IRS records, under certain circumstances the IRS may require the business to withhold 28 percent after being notified.

On August 16, 2009, the IRS published a final rule² which excludes payment card transactions from those transactions that are subject to be reported by a purchaser on a form 1099, since credit card processors were already required to report these transactions after December 31, 2010.

Impact of the 1099 Reporting Provision

- 1. The new 1099 reporting mandate will impose a substantial burden on the backs of nonprofits, governments and businesses—especially small business. Starting in 2012, the new 1099 provision will:**

Cover 40 Million Entities— According to the IRS National Taxpayer Advocate³, Nina Olson, the provision will impact 26 million sole proprietorships, 4 million S corporations, 2 million C corporations, 3 million partnerships, 2 million farming businesses, 1 million charities and other tax-exempt organizations, and more than 100,000 federal, state, and local government entities. Olson indicates, the “information reporting requirement...may present significant administrative challenges to taxpayers and the IRS.”

Requires Numerous Additional IRS Filings— All covered entities will have to file form 1099 reports to the IRS for each business they purchase from whose non-credit card purchases total \$600 or more for the year. Additionally, they will have to mail copies to their vendors. By some accounts, this can increase by a factor of one-hundred the number of 1099 filings some companies will have to make.

Impose New Information Collection Burdens— All covered entities will have to collect Taxpayer Identification Numbers (TIN) as well as the company name and address from each business they make purchases from in which they anticipate that the non-credit card purchases will total \$600 or more for the year.

Subject the Self-Employed to Identity Theft— If the business vendor is a sole proprietorship, it will have to provide the purchaser with their Social Security number or apply for a separate Employer Identification Number (EIN) in order to protect itself from privacy and identity theft concerns.

Compel More Backup Withholding Burdens— As the number of transactions that are covered under the provision greatly expands, so does the possibility for backup withholding. If the business vendor fails to furnish a correct TIN, then under certain circumstances, the

² Information Reporting for Payments Made in Settlement of Payment Card and Third Party Network Transactions, 75 Fed. Reg. at 49,828 (August 16, 2010) (codified at §1.6041-1(a)(1)(iv) and (v) Example 1 and Example 2).

³ National Taxpayer Advocate, Report to Congress: Fiscal Year 2011 Objectives, Pages 9-13, Jun 30, 2010

purchasing entity is required by law to withhold 28 percent of the purchase price. Failure to properly withhold an amount generally results in liability for that amount.

Impose New Complex Record-Keeping Requirements— All covered entities will have to keep records on all their purchases from businesses for both goods and services that can be sorted by TIN and by payment method. Moreover, only the non-credit card purchases from businesses that total \$600 or more for the year will have to be reported. Thus, complex and costly accounting changes will have to be made to their existing accounting systems.

Subject Businesses to Costly Audits— IRS does not have the capability to create an adequate picture of a company's sales by matching the reported 1099 revenue to the company's reported revenue. This may result in many unnecessary and costly audits for the business vendor. Should the covered entity make a mistake filling out the form 1099, the IRS does not have a means by which they can independently verify the amount. These mistakes can trigger audits in which the vendor will have to prove that IRS data is incorrect without the sources of such data.

Dramatically Increase Accounting Costs— Not only will all covered entities bear the additional costs of new record-keeping requirements and postage, but as recipients of multiple 1099 forms, businesses will have to take time to reconcile these amounts with their reported sales. Differences in the treatment of credits, returns and accounting periods will only serve to frustrate conscience-minded business owners.

Requires Small Businesses to File Returns Electronically— If the number of 1099 filings exceeds 250, then the entity will have to file electronically, further increasing the cost burden of this provision, especially to small businesses.

Heavily Penalizes Honest Taxpayers— The 1099 reporting provision will create an even more unlevel playing field between compliant and noncompliant business taxpayers. In reality, the heavy burden of the 1099 reporting provision will be paid for by compliant businesses. Those businesses attempting to avoid their tax obligations will continue to find creative ways to hide income.

2. The new 1099 reporting requirement will alter business behavior, which could have dramatic negative consequences for small businesses. The unintended consequences of the 1099 reporting provision will:

Increase the Cost of Goods and Services— Many of the covered entities, in an attempt to reduce their paperwork burdens, will simply require that the vendor take a credit card for the transaction since those transactions are exempt from reporting. The payment card transaction fees will be passed on to businesses and consumers through the cost of their products and services.

Stifle Product Innovation— New products and services require a flexible marketplace in which vendors can easily overcome the reluctance of purchasers to try new items. The new paperwork and reporting requirements will serve to make the marketplace less hospitable for trials of new products and services.

Swell the Need for Available Business Credit— It will be essential for businesses, especially smaller ones, to be able to obtain credit cards with sufficient credit limits in order to do business in the marketplace. This will be a catch-22 for many small businesses since they need a proven track record in business to qualify for ample credit limits.

Lead to More Business Failures— The new 1099 requirements may result in a shift from more flexible and less costly vendor credit to less flexible and more expensive credit card financing. Contraction of credit to the business, for whatever reason, could have a major impact on survivability.

Disadvantage New Businesses Relationships and Startups— Since there will be a heavy paperwork and record-keeping cost for establishing a new business relationship, many of the 40 million covered entities will be extremely reluctant to set up a relationship with a business, relying more heavily on established vendors.

Drive Purchasing Away from Small Business—Many of the covered entities will be more apt to consolidate their business purchases with several large vendors with a broad geographic presence and a more diverse product line in order to reduce the paperwork burden. Additionally, larger vendors with sophisticated software may provide as a service much of the reporting for their business customers, providing further incentives to do business with bigger businesses over smaller ones.

Drives Additional Tax Noncompliance—The 1099 reporting provision could undermine our voluntary tax compliance system, further frustrating tax collection efforts. Imposing vast and costly new data collection and reporting requirements on compliant taxpayers may be viewed by some businesses as unreasonable and overreaching by the government.

3. The IRS does not have the resources or the ability to use the new 1099 information to reconstruct an accurate picture of a company's revenues.

The 1099 Reporting Does Not Capture Consumer Sales—For many businesses, a large volume of their sales are made directly by consumers whose cash purchases are not independently reported to the IRS.

Sales Below the \$600 Threshold Are Not Captured—There will be many transactions totaling under \$600 in a year that will not be reported to the IRS.

Returns, Rebates, and Discounts Are Reported Differently—Purchases of products and services are subject to returns, rebates, discounts, and other adjustments that are handled differently by the buyer and vendor. This will result in disparities between the amount reported as sales by the vendor and the amount reported to the IRS on the form 1099 by the purchaser.

Many Companies Do Not Report Revenue on a Calendar Year Basis—Some businesses have different tax accounting years creating further discrepancies between a company's sales that would be reported to the IRS on a fiscal-year basis and the 1099 reporting

that would be reported on a calendar-year basis. Additionally, some businesses use the accrual method of accounting, while others use the cash method.

IRS Taxpayer Advocate Doubts the Usefulness—Even the IRS National Taxpayer Advocate indicated that “IRS will face challenges making productive use of this new volume of information reports.”⁴

Conclusion

The Chamber has tremendous concerns with the new reporting requirements for reporting payments contained in the Affordable Care Act. Unless this section is repealed, businesses across the nation will be subjected to the folly of data collection and information filing on virtually all the transactions they make aggregating \$600 or more in a year at a time in which many can least afford it. When the United States is depending on the small business community to generate jobs and grow the economy, lawmakers are diverting their precious time and resources to collecting volumes of information and filling out mounds of new paperwork for the government.

The ultimate irony of these new burdens is that the IRS neither has the resources nor the ability to use the new information to reconstruct an accurate picture of a company’s revenues since a large volume of business-to-consumer transactions are not reported. While the vast majority of compliant taxpayers will bear the cost of implementing this law, it will have only minimal benefit as a government tool in reducing non-compliance.

Moreover, the U.S. tax system is only as strong as the willingness of its participants to voluntarily comply. Imposing vast new data collection and reporting requirements may be viewed by many small business owners as unreasonable and overreaching. In the end, this could serve to undermine confidence in the government and further frustrate tax collection efforts.

Given the specific directives and requirements contained in the applicable statutory language, any recommendations the Chamber could provide to reduce burden would be immaterial given the overall onerous burdens that are imposed under the 1099 reporting mandate. As soon as late spring, many of the covered entities must start making costly changes to their accounting systems in order to anticipate the January 1, 2012, requirements of the 1099 reporting mandate. In light of this the Chamber is asking that Congress to quickly and fully repeal this onerous provision.

Thank you for the opportunity to provide comments for the record.

⁴ National Taxpayer Advocate, Report to Congress: Fiscal Year 2011 Objectives, Pages 9-13, Jun 30, 2010



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February 9, 2011

The Honorable Sam Graves
Chairman, Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

The Honorable Nydia Velazquez
Ranking Member
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Graves and Ranking Member Velazquez:

On behalf of the members of the Society of American Florists (SAF) the national trade association representing 8,000 floral businesses, I strongly urge you to support legislation to eliminate the expanded 1099 reporting requirements included in the new health care law passed in 2010. SAF commends Rep. Dan Lungren (R-3-Calif.) for introducing H.R. 4, the "Small Business Paperwork Mandate Elimination Act" which would repeal the 1099 provision. Repeal is the only solution to relieve businesses from this onerous administrative burden that will hinder job growth and investment.

Beginning with payments made in 2012, all companies must issue 1099 tax forms to any individual or corporation from which they buy more than \$600 in goods or services in a tax year. Small businesses will also have to gather Taxpayer Identification Numbers (TINs), deal with withholding requirements, and mail 1099 tax forms for basic business expenses.

The 1099 reporting expansion is complex, confusing and will impose a costly new mandate on the small business in every segment of the floral industry from growers, wholesalers and retailers to importers and manufacturers. Only a straightforward repeal will remove the paperwork and administrative burdens created by this new law. Many of our members do not have dedicated personnel to track these payments. Forcing them to track amounts spent and method of payment for both goods and services will expose our members to potential mistakes resulting in substantive penalties.

SAF is concerned that in the current economic downturn, an expansion of the 1099 requirements will make it harder for our members to operate let alone remain competitive. SAF urges you to do all you can to expedite repeal the 1099 reporting requirements.

The Society of American Florists is the national trade association representing the entire floriculture industry, a \$35 billion component of the U.S. economy. Membership includes 8,000 small businesses, including growers, wholesalers, retailers, importers and related organizations, located in communities nationwide and abroad. The industry produces and sells cut flowers and foliage, foliage plants, potted flowering plants, and bedding plants.

We appreciate your attention to this important matter and look forward to working with you on this and other critical reforms in the months ahead.

Thank you for your consideration.

Sincerely,

David Mitchell

David Mitchell
Chairman, SAF Government Relations Committee

1401 Deer Street
Arlington, VA 22214 USA
703.836.8700 voice
703.836.8705 fax
www.safusa.org
www.aboutflowers.com